

AGENDA BILL APPROVAL FORM

Agenda Subject: Purchase and Sale Agreement between the City of Auburn and Safeway		Date: January 13, 2010
Department: Legal	Attachments: Resolution No. 4562 including Exhibit A	Budget Impact:
Administrative Recommendation: City Council adopt Resolution No. 4562.		
Background Summary: <p>The City of Auburn owns property on which it intends to locate a future facility ("City Property"), identified as King County Tax Parcel No. 2521049114, which has no direct access to a public right-of-way. The City owns a second property abutting "C" Street SW (King County Tax Parcel No. 2521049115), which is separated from the City Property by property owned by The Safeway Company, Inc.</p> <p>Pursuant to Council authorization in City of Auburn Ordinance 6233, the City filed a condemnation action to obtain a 1.2 acre portion of the Safeway property to provide access to the City Property.</p> <p>The City and Safeway have negotiated a potential settlement of the condemnation, under which the City would purchase the 1.2 acre portion of the Safeway property and Safeway would retain an emergency access easement over a portion of the 1.2 acre parcel.</p> <p>Resolution No. 4562 authorizes the Mayor to enter into a purchase and sale agreement for the 1.2 acre parcel and to dismiss of the condemnation action to obtain that property authorized under Ordinance 6233.</p> <p>A0119-1 A3.13.4</p>		
Reviewed by Council & Committees: <input type="checkbox"/> Arts Commission COUNCIL COMMITTEES: <input type="checkbox"/> Airport <input type="checkbox"/> Finance <input type="checkbox"/> Hearing Examiner <input type="checkbox"/> Municipal Serv. <input type="checkbox"/> Human Services <input type="checkbox"/> Planning & CD <input type="checkbox"/> Park Board <input type="checkbox"/> Public Works <input type="checkbox"/> Planning Comm. <input type="checkbox"/> Other _____		Reviewed by Departments & Divisions: <input type="checkbox"/> Building <input type="checkbox"/> M&O <input type="checkbox"/> Cemetery <input type="checkbox"/> Mayor <input type="checkbox"/> Finance <input type="checkbox"/> Parks <input type="checkbox"/> Fire <input type="checkbox"/> Planning <input type="checkbox"/> Legal <input type="checkbox"/> Police <input type="checkbox"/> Public Works <input type="checkbox"/> Human Resources <input type="checkbox"/> Information Services
Action: Committee Approval: <input type="checkbox"/> Yes <input type="checkbox"/> No Council Approval: <input type="checkbox"/> Yes <input type="checkbox"/> No Call for Public Hearing ___/___/___ Referred to _____ Until ___/___/___ Tabled _____ Until ___/___/___		
Councilmember: Backus		Staff: Heid
Meeting Date: January 19, 2010		Item Number: VIII.B.6

RESOLUTION NO. 4 5 6 2

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF AUBURN, WASHINGTON, AUTHORIZING
THE MAYOR AND CITY CLERK TO EXECUTE AN
AGREEMENT BETWEEN THE CITY OF AUBURN
AND SAFEWAY, INC. FOR CITY PURCHASE OF
PROPERTY FROM SAFEWAY, INC. IN LIEU OF
CONDEMNATION

WHEREAS, the City of Auburn owns property on which it intends to locate a future facility ("City Property"), identified as King County Tax Parcel No. 2521049114; and

WHEREAS, the City Property has no direct access to a public right-of-way; and

WHEREAS, the City owns a second property abutting "C" Street SW (King County Tax Parcel No. 2521049115), which is separated from the City Property by property owned by The Safeway Company, Inc.; and

WHEREAS, pursuant to Council authorization in City of Auburn Ordinance 6233, the City filed a condemnation action to obtain a 1.2 acre portion of the Safeway property to provide access to the City Property; and

WHEREAS, the City and Safeway have negotiated a potential settlement of the condemnation, under which the City would purchase the 1.2 acre portion of the Safeway property and Safeway would retain an emergency access easement over a portion of the 1.2 acre parcel; and

WHEREAS, it is in the public interest for the parties to enter into a purchase and sale agreement for the 1.2 acre parcel,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, KING COUNTY, WASHINGTON, HEREBY RESOLVES as follows:

Section 1. The Mayor of the City of Auburn and the Auburn City Clerk are hereby authorized to execute a Purchase and Sale Agreement between the City of Auburn and Safeway, Inc., which agreement shall be in substantial conformity with the Purchase and Sale Agreement a copy of which is attached hereto, marked as Exhibit "A" and incorporated herein by this reference.

Section 2. The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directives of this legislation, including dismissal of the condemnation action authorized under Ordinance 6233.

Section 3. This Resolution shall be in full force and effect upon passage and signatures hereon.

Dated and Signed this _____ day of _____, 2010.

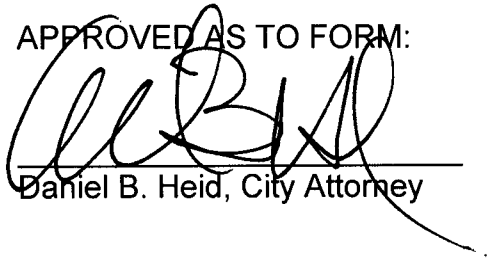
CITY OF AUBURN

PETER B. LEWIS
MAYOR

ATTEST:

Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:



Daniel B. Heid, City Attorney

PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT (this "Agreement") is entered into as of the ____ day of _____, 2010, by and between the CITY OF AUBURN, a Washington municipal corporation, as Purchaser (hereinafter the "CITY"), and SAFEWAY, INC., a Delaware corporation (hereinafter the "SELLER").

RECITALS

A. The SELLER is the owner of certain real property and all improvements thereon located in the City of Auburn, County of King, Washington, at the common address of 3520 Pacific Avenue South (King County Tax Parcel No. 252104-9096) which is legally described as follows:

That portion of the East half of Section 25, Township 21 North, Range 4 East, Willamette Meridian, King County, Washington, more particularly described as follows;

Lot 1 of the City of Auburn Lot Line Adjustment No. LLA02-0015, as recorded under King county recording no. 20020725001632.

B. The CITY desires to purchase from the SELLER a certain portion of the above described property legally described and depicted in Exhibit "A," to the warranty deed (the "Acquired Property"), said deed being attached hereto as Exhibit "A" and incorporated herein by this reference (the "Deed").

C. SELLER desires to sell the Acquired Property to CITY, on the terms and conditions set forth herein, retaining an easement over a portion thereof (the "Easement Area") legally described and depicted in Exhibit "B" to the Deed. Said easement being for Grantor's "emergency use," as that term is defined in the Deed, for ingress and egress to the property legally described and depicted in Exhibit "C" to the Deed (the "Safeway Property").

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, SELLER and CITY hereby agree as follows:

1. Certain Defined Terms. For purposes of this Agreement, the terms set forth below shall have the meaning assigned to them:

1.1 "Closing" or "Close of Escrow" means the recordation of the Deed in the Official Records and SELLER's receipt of the Purchase Price.

1.2 "Closing Date" means any mutually agreeable date on or before February 19, 2010.

1.3 "Escrow" means the escrow opened with Escrow Agent for the consummation of the transaction described in this Agreement.

1.4 "Escrow Agent" means Chicago Title Insurance Company (Phone: (253) 945-9140).

1.5 "Official Records" means the official real property records of King County, Washington.

1.6 "Opening of Escrow" means the date a fully executed copy of this Agreement is deposited with Escrow Agent.

1.7 "Permitted Exceptions" has the meaning as set forth in Section 6.4 below.

1.8 "Purchase Price" has the meaning as set forth in Section 3.

1.9 "Title Company" means Chicago Title Company.

1.10 "Title Policy" means an ALTA (1970 Form B) extended coverage owner's policy of title insurance issued by the Title Company to CITY with coverage in the amount of purchase price, showing title to the Acquired Property vested in CITY subject only to the Permitted Exceptions.

2. Purchase and Sale. The SELLER agrees to sell to CITY, and CITY agrees to purchase from SELLER, the Acquired Property upon the terms and conditions set forth in this Agreement.

3. Purchase Price; Cash Payment. The total cash purchase price for the Acquired Property (the "Purchase Price") shall be One Hundred Thousand Dollars and No/100's (\$100,000.00). The Purchase Price shall be paid to SELLER in cash at Closing.

4. Covenants, Conditions, Restrictions and Drainage Agreement. SELLER is obligated pursuant to the Drainage Agreement and by Covenants, Conditions, Easements and Restrictions ("CCER") entered into between SELLER and Boeing on September 20, 2002, which is attached hereto as Exhibit "B," to assist with the maintenance and upkeep of various drainage easements. The parties specifically agree that the purchase price fully and completely compensates SELLER for the ongoing responsibility of associated maintenance and upkeep of the various drainage easements as described in the Drainage Easement. The parties agree to enter into an Agreement Regarding Drainage Agreement in substantially the same form as the agreement at Exhibit "C."

5. Earnest Money Deposit. On execution of this Agreement, CITY shall deposit with Escrow Agent One Thousand Dollars and No/100's Dollars (\$1,000.00) in cash (the "Deposit"), which shall be held by Escrow Agent as an earnest money deposit hereunder. The Deposit shall be held in Escrow and applied or disposed of by Escrow Agent as provided herein. Escrow Agent shall place the Deposit in an interest-bearing account approved by CITY and SELLER and all interest earned thereon shall be added to and become a part of the Deposit.

6 Due Diligence.

6.1 Due Diligence Period. CITY shall have the right for a period of sixty (60) days from the date of this Agreement (the "Due Diligence Period") to conduct CITY's due diligence review, examination and inspection of all matters pertaining to its acquisition of the Acquired Property, including such inspections, tests, and surveys as CITY deems appropriate to determine the suitability of the Acquired Property for CITY's intended use. SELLER shall provide CITY and CITY's agents and consultants with reasonable access to the Acquired Property and, to the extent such information is in the possession or control of SELLER, shall provide reasonable access to appropriate information respecting the Acquired Property, subject to the terms and conditions of this Agreement. CITY's obligation to purchase the Acquired Property shall be contingent upon its approval of such property after conducting its due diligence review. If, based upon CITY's review, examination and inspection, CITY shall determine in its sole discretion that it intends to acquire the Acquired Property, then CITY shall promptly notify SELLER of such determination in writing prior to the expiration of the Due Diligence Period, whereupon CITY's due diligence contingency shall be deemed satisfied and waived, the Deposit shall become nonrefundable (except as otherwise provided herein), and CITY shall proceed to Closing. In the event that CITY shall fail to have delivered such notice to SELLER on or before the expiration of the Due Diligence Period, then this Agreement shall automatically terminate, the Deposit shall be returned to CITY, and CITY's rights under this Agreement shall be of no further force or effect.

6.2 Due Diligence Contingency Waived. CITY has conducted reviews of the site of the Acquired Property and has independently obtained and reviewed such documents as SELLER would normally provide as part of a due diligence review, and CITY has determined in its sole discretion that it intends to acquire the Acquired Property, and this Section 6.2 shall serve as notice to SELLER of such determination. CITY's due diligence contingency is hereby satisfied and waived. The Deposit is nonrefundable (except as otherwise provided herein), and CITY shall proceed to Closing.

6.3 Title Commitment. Promptly after mutual execution of this Agreement, CITY shall obtain an extended preliminary title insurance commitment covering the Acquired Property from the Title Company (the "Commitment"), together with copies of all recorded documents listed as special exceptions therein. Approval by CITY of the exceptions to title set forth in the Commitment (other than as hereinafter set forth) shall

be a condition precedent to CITY's obligation to purchase the Acquired Property. Unless CITY gives written notice that it disapproves the exceptions to title shown on the Commitment (other than the exceptions to title approved by CITY and described in Section 6.4 below), stating the exceptions so disapproved, within thirty (30) days after the date of this Agreement, CITY shall be deemed to have approved such exceptions. If CITY disapproves any title exceptions, SELLER shall have a ten (10) day period after its receipt of CITY's written notice of disapproval of the same within which to provide written notice to CITY as to which of such disapproved title exceptions the SELLER will remove (or cause to be removed) from title; provided, however, that SELLER shall not be required to actually remove such exception(s) until Closing. If, for any reason, SELLER's notice given pursuant to the immediately preceding sentence does not covenant to remove all of CITY's disapproved title exceptions at or prior to Closing, CITY shall have the right to terminate this Agreement by written notice to SELLER and Escrow Agent given within ten (10) days after the earlier of the expiration of such ten (10) day period or the date SELLER informs CITY that it does not intend to remove the disapproved items (the "Termination Notice"). CITY's failure to deliver the Termination Notice within such ten (10) day period shall be deemed CITY's approval of any such previously disapproved title exception. If CITY delivers the Termination Notice within such ten (10) day period, the obligation of SELLER to sell, and CITY to buy, the Acquired Property as herein provided shall terminate and the Deposit shall be returned to CITY. CITY shall have the option to waive the condition precedent set forth in this Section 5.3 by written notice to SELLER. In the event of such waiver, such condition precedent shall be deemed satisfied.

6.4 Permitted Exceptions. In addition to such other exceptions to title as may be approved by CITY pursuant to the provisions of Section 6.3 above, CITY shall accept title to the Acquired Property subject to the following (collectively, the "Permitted Exceptions"):

6.4.1 The printed exceptions which appear in the ALTA (Form 1970B) form extended coverage owner's policy of title insurance issued by Title Company in the State of Washington; and

6.4.2 Items created by, or on behalf of, CITY.

6.5 No New Leases or Contracts. Prior to Closing, SELLER shall not enter into any new leases, contracts or agreements affecting the Acquired Property without the prior written consent of CITY, except the SELLER may enter into interim contracts or agreements in connection with the management, maintenance, repair or preservation of the Acquired Property in the normal course of business if each such contract or agreement expires or is terminated at or prior to Closing.

7. CITY's Right of Entry. CITY, and its agents and consultants, at CITY's sole expense and risk, may enter the Acquired Property during the term of this Agreement at

reasonable times scheduled in advance with SELLER for the purpose of CITY's due diligence study of the Acquired Property. CITY shall (a) exercise care at all times on or about the Acquired Property, and (b) take precautions for the prevention of injury to persons or damage to property on or about the Acquired Property. CITY shall keep the Acquired Property free from all mechanics', materialmen's and other liens, and all claims thereof, arising from any work or labor done, services performed, or materials and supplies furnished in connection with CITY's actions in the exercise of its right of entry on the Acquired Property, and CITY shall indemnify and defend SELLER against and hold SELLER harmless from all such liens and claims. If this transaction fails to close for any reason other than a default by SELLER hereunder, CITY shall furnish SELLER with a copy of all such inspections, studies and surveys and shall assign or quitclaim all of CITY's right, title and interest in and to any permits, approvals, or permit or approval applications.

8. Closing.

8.1 Time for Closing. This purchase and sale shall be closed in the office of Escrow Agent on the Closing Date. CITY and SELLER shall deposit in Escrow with Escrow Agent all instruments, documents and monies necessary to complete the sale in accordance with this Agreement. Funds held in reserve accounts pursuant to escrow instructions shall be deemed, for purposes of this definition, as available for disbursement to SELLER.

8.2 Closing Costs.

8.2.1 SELLER's Costs. SELLER shall pay (a) the premiums for the standard coverage portion of the Title Policy, including applicable sales tax, (b) one-half (1/2) of all escrow fees and costs, (c) SELLER's share of prorations, if any, and (d) all assessments for local improvement or special benefit districts. This sale is being conducted in lieu of condemnation under King County Superior Court Cause No. 09-2-271 54-2KNT, and is exempt from real estate excise taxes under Washington Administrative Code Section 458-61A-206.

8.2.2 CITY's Costs. CITY shall pay (a) one-half (1/2) of all escrow fees and costs, (b) the recording fees for the Deed, (c) CITY's share of prorations, if any, and (d) any additional premium charged for extended coverage for the Title Policy and any additional endorsements or coverage CITY may require, including applicable sales tax.

8.2.3 Other Costs. CITY and SELLER shall each pay its own legal fees and fees of its own consultants. All other costs and expenses shall be allocated between CITY and SELLER in accordance with the customary practice of King County, Washington.

8.3 Real Property Taxation. SELLER shall be responsible for all real property taxes due and owing prior to the Closing.

8.4 Closing Documents.

8.4.1 SELLER's Documents. At Closing, SELLER shall deliver to Escrow Agent the following instruments and documents:

8.4.1.1 The executed and acknowledged Deed in the form attached hereto as Exhibit "A," conveying the Acquired Property to CITY;

8.4.1.2 The executed real estate excise tax affidavit to accompany the Deed; and

8.4.1.3 An executed nonforeign person affidavit in the form required under Section 1445 of the Internal Revenue Code.

8.4.2 CITY's Documents. At Closing, CITY shall deliver to Escrow Agent the following funds, instruments and documents:

8.4.2.1 The balance of the Purchase Price in accordance with Section 3;

8.4.2.2 CITY's share of costs and expenses as determined in accordance with Section 7.3; and

8.4.2.3 The executed real estate excise tax affidavit referenced in Section 8.4.1.2 above.

8.5 Possession. CITY shall be entitled to possession of the Acquired Property upon Closing.

9. Title Insurance. As soon as available after Closing, SELLER shall provide to CITY the Title Policy, dated as of the Closing Date, subject only to the Permitted Exceptions.

10. Conditions to Closing.

10.1 CITY's Conditions to Closing. Notwithstanding anything to the contrary set forth herein, CITY's obligation to close hereunder is expressly subject to satisfaction or waiver by CITY in writing of each of the following conditions:

10.1.1 Execution and recording of the Maintenance and Indemnification Agreement.

10.1.2 Written confirmation of the Washington State Department of Ecology's ("WSDOE") consent to the sale as provided for in the Restrictive Covenant between Boeing and WSDOE dated September 18, 2002.

10.2 SELLER's Conditions to Closing. Notwithstanding anything to the contrary set forth herein, SELLER's obligation to close hereunder is expressly subject to satisfaction or waiver by SELLER in writing of each of the following conditions:

11. Representations and Warranties.

11.1 SELLER's Representations and Warranties. In addition to any other representations or warranties of SELLER elsewhere in this Agreement, SELLER represents and warrants to CITY now, and as of the Date of Closing, that:

11.1.1 Authority. SELLER, and the person signing on behalf of SELLER, has full power and authority to execute this Agreement and perform SELLER's obligations hereunder, and all necessary action to authorize this transaction has been taken, except as specifically provided herein.

11.1.2 Hazardous Substances. SELLER has not received notification of any kind from any governmental agency suggesting that the Acquired Property is or may be targeted for a Hazardous Substances cleanup; to the best of SELLER's knowledge the Acquired Property has not been used (a) for the storage, disposal or discharge of oil, solvents, fuel, chemicals or any type of toxic, dangerous, hazardous or biological waste or substance (collectively, "Hazardous Substances"), or (b) as a landfill or waste disposal site; to the best of SELLER's knowledge the Acquired Property has not been contaminated with any Hazardous Substances; and to the best of SELLER's knowledge, there are no underground storage tanks on the Acquired Property.

11.1.3 Other Rights. No person or entity has any right to lease or purchase any interest in the Acquired Property or any part thereof.

11.2 CITY's Representations and Warranties. In addition to any other representations and warranties of CITY elsewhere in this Agreement, CITY represents and warrants to SELLER now, and as of the Date of Closing, that (a) CITY has full power to execute, deliver and carry out the terms and provisions of this Agreement, and has taken all necessary action to authorize the execution, delivery and performance of this Agreement; and (b) the individual executing this Agreement on behalf of CITY has the authority to bind CITY to the terms and conditions of this Agreement.

11.3 "AS IS" CONDITION OF PROPERTY. THE PURCHASE PRICE REFLECTS THAT THE ACQUIRED PROPERTY IS BEING PURCHASED BY CITY ON AN "AS IS" "WHERE IS" AND "WITH ALL FAULTS" BASIS, EXCEPT TO THE EXTENT OF REPRESENTATIONS AND WARRANTIES SPECIFICALLY MADE BY SELLER HEREIN OR IN THE WARRANTY DEED OR OTHER DOCUMENTS TO BE DELIVERED TO CITY AT CLOSING. CITY HEREBY WAIVES AND RELINQUISHES ALL RIGHTS AND PRIVILEGES ARISING OUT OF, OR WITH RESPECT TO, ANY REPRESENTATIONS, WARRANTIES OR COVENANTS,

WHETHER EXPRESS OR IMPLIED, WHICH MAY HAVE BEEN MADE OR GIVEN, OR WHICH MAY BE DEEMED TO HAVE BEEN MADE OR GIVEN, BY SELLER OR ITS REPRESENTATIVES, INCLUDING BUT NOT LIMITED TO ANY BROKER, EXCEPT FOR THOSE REPRESENTATIONS, WARRANTIES AND COVENANTS SET FORTH IN THIS AGREEMENT OR IN ANY DOCUMENTS TO BE EXECUTED AND DELIVERED BY SELLER AT CLOSING.

EXCEPT TO THE EXTENT OF ANY REPRESENTATIONS OR WARRANTIES SET FORTH ELSEWHERE IN THIS AGREEMENT OR IN ANY DOCUMENTS TO BE EXECUTED AND DELIVERED BY SELLER AT CLOSING, CITY HAS NOT RELIED UPON AND WILL NOT RELY UPON, AND SELLER EXPRESSLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES WITH RESPECT TO, AND SHALL HAVE NO LIABILITY FOR: (I) THE CONDITION OF THE ACQUIRED PROPERTY OR ANY BUILDINGS, STRUCTURES OR IMPROVEMENTS LOCATED THEREON OR THE SUITABILITY THEREOF FOR HABITATION, OCCUPANCY OR FOR CITY'S INTENDED USE OR FOR ANY USE WHATSOEVER; (II) ANY APPLICABLE BUILDING, ZONING OR FIRE LAWS OR REGULATIONS OR WITH RESPECT TO COMPLIANCE THEREWITH OR WITH RESPECT TO THE EXISTENCE OF OR COMPLIANCE WITH ANY REQUIRED PERMITS, IF ANY, OF ANY GOVERNMENTAL AGENCY; (III) THE AVAILABILITY OR EXISTENCE OF ANY WATER, SEWER OR UTILITIES, ANY RIGHTS THERETO, OR ANY WATER, SEWER OR UTILITY DISTRICTS; (IV) ACCESS TO ANY PUBLIC OR PRIVATE SANITARY SEWER SYSTEM; (V) THE FACT THAT ALL OR A PORTION OF THE ACQUIRED PROPERTY MAY BE LOCATED ON OR NEAR AN EARTHQUAKE FAULT LINE; OR (VI) EXCEPT AS SPECIFICALLY SET FORTH ABOVE, THE PRESENCE OF ANY HAZARDOUS SUBSTANCES IN ANY IMPROVEMENTS ON THE ACQUIRED PROPERTY, INCLUDING WITHOUT LIMITATION ASBESTOS OR FORMALDEHYDE, OR THE PRESENCE OF ANY ENVIRONMENTALLY HAZARDOUS WASTES OR MATERIALS ON OR UNDER THE ACQUIRED PROPERTY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXCEPT TO THE EXTENT OF ANY REPRESENTATIONS OR WARRANTIES SET FORTH ELSEWHERE IN THIS AGREEMENT OR IN ANY DOCUMENTS TO BE EXECUTED AND DELIVERED BY SELLER AT CLOSING, SELLER SHALL HAVE NO LIABILITY TO CITY WITH RESPECT TO THE CONDITION OF THE ACQUIRED PROPERTY UNDER COMMON LAW, OR ANY FEDERAL, STATE, OR LOCAL LAW OR REGULATION, INCLUDING BUT NOT LIMITED TO THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980 AS AMENDED, 42 U.S.C.A. SECTIONS 9601 ET SEQ., AND THE WASHINGTON MODEL TOXICS CONTROL ACT ("MTCA"), RCW 70.105D. CITY HEREBY RELEASES AND WAIVES ANY AND ALL CLAIMS WHICH THE CITY HAS OR MAY HAVE AGAINST SELLER UNDER ANY OF THE FOREGOING LAWS OR WITH RESPECT TO THE CONDITION OF THE ACQUIRED PROPERTY, EXCEPT TO THE EXTENT OF ANY CLAIMS CITY MAY HAVE ARISING FROM ANY

EXPRESS REPRESENTATIONS, WARRANTIES OR COVENANTS OF SELLER UNDER THIS AGREEMENT OR ANY DOCUMENTS TO BE EXECUTED AND DELIVERED BY SELLER AT CLOSING. CITY ACKNOWLEDGES TO SELLER THAT CITY IS GIVEN THE OPPORTUNITY UNDER THIS AGREEMENT TO FULLY INSPECT THE ACQUIRED PROPERTY AND CITY ASSUMES THE RESPONSIBILITY AND RISKS OF ALL DEFECTS AND CONDITIONS, INCLUDING SUCH DEFECTS AND CONDITIONS, IF ANY, THAT CANNOT BE OBSERVED BY CASUAL INSPECTION, SUBJECT TO THE EXCEPTION OF RIGHTS EXPRESSLY SET FORTH ABOVE.

SELLER: _____ CITY: _____

IF A PHASE I ENVIRONMENTAL SITE ASSESSMENT REPORT OR OTHER ENVIRONMENTAL STUDY OR REPORT (COLLECTIVELY, THE "PHASE I REPORT") HAS BEEN DELIVERED BY SELLER TO CITY, THEN, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BY CLOSING THE TRANSACTION AS CONTEMPLATED HEREIN, CITY AGREES THAT, EXCEPT TO THE EXTENT EXPRESSLY CONTRARY TO ANY REPRESENTATIONS, WARRANTIES OR COVENANTS OF SELLER SET FORTH IN THIS AGREEMENT: (A) CITY SHALL BE DEEMED TO HAVE ACCEPTED ALL RISK ASSOCIATED WITH ADVERSE PHYSICAL CHARACTERISTICS AND EXISTING ENVIRONMENTAL CONDITIONS THAT MAY OR MAY NOT HAVE BEEN REVEALED BY CITY'S INVESTIGATION OF THE PHASE I REPORT, AND (B) AS BETWEEN SELLER AND CITY, CITY SHALL BE DEEMED TO HAVE ACCEPTED ALL COSTS AND LIABILITIES ASSOCIATED IN ANY WAY WITH THE PHYSICAL AND ENVIRONMENTAL CONDITION OF THE ACQUIRED PROPERTY. CITY ACKNOWLEDGES AND AGREES THAT SELLER MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE TRUTH, ACCURACY OR THOROUGHNESS OF THE INVESTIGATION, PREPARATION OR CONTENT OF THE PHASE I REPORT, OR THE COMPETENCE OR ABILITY OF THE PERSONS OR COMPANIES PREPARING SUCH REPORT. CITY AGREES THAT, BY CLOSING THE TRANSACTION CONTEMPLATED HEREIN, CITY WILL HAVE HAD AN OPPORTUNITY TO REVIEW THE ABOVE REPORT PRIOR TO THE CLOSING DATE IN ORDER TO MAKE AN INDEPENDENT VERIFICATION OF THE INFORMATION CONTAINED THEREIN, AND THAT CITY AND ITS ENVIRONMENTAL CONSULTANTS WILL HAVE HAD AN OPPORTUNITY TO CONDUCT TESTS ON THE ACQUIRED PROPERTY.

12. Maintenance of Property; Risk of Loss, Condemnation.

12.1 Maintenance of Property. From the date of this Agreement until the Closing Date (or any earlier termination of this Agreement), SELLER agrees to maintain the Acquired Property in substantially the same condition existing as of the date hereof, ordinary wear and tear, damage by casualty excepted.

PURCHASE AND SALE AGREEMENT

12.2 Risk of Loss; Condemnation. Risk of loss of or damage to the improvements on the Acquired Property shall be borne by CITY at all times and no event of casualty or damage shall affect the parties' obligations hereunder or the Purchase Price, however, CITY shall have the right to receive any insurance proceeds due SELLER in connection with any casualty or damage and SELLER hereby covenants to maintain commercially reasonable casualty insurance in place with respect to the Acquired Property at all times prior to Closing. SELLER shall promptly notify CITY of any condemnation or eminent domain proceeding which affects the Acquired Property, and SELLER covenants and agrees not to commence or pursue any such action. In the event of any condemnation or eminent domain proceeding by any entity other than SELLER, or a deed in lieu or under threat thereof, which affects a material portion of the Acquired Property, CITY may elect either to terminate this Agreement, or to purchase the Acquired Property in the condition existing on the Closing Date without adjustment of the Purchase Price. If CITY elects to terminate this Agreement, the Deposit shall be returned to CITY. If CITY elects to purchase the Acquired Property, SELLER shall not be liable to restore same, and CITY shall be entitled to any condemnation award or payment in lieu thereof payable to SELLER in its capacity as the owner thereof.

13. Default.

13.1 Time of Essence. Time is of the essence of this Agreement.

13.2 SELLER's Remedies for CITY's Default and Failure to Close. If CITY fails, without legal excuse, to complete the purchase of the Acquired Property in accordance with this Agreement, SELLER's sole and exclusive remedy shall be to retain the Deposit as liquidated damages. CITY expressly agrees that the retention of the Deposit by SELLER represents a reasonable estimation of the damages in the event of CITY's default and failure to close hereunder, that actual damages may be difficult to ascertain and that this provision does not constitute a penalty. In this respect, CITY and SELLER acknowledge that these damages have been specifically negotiated between CITY and SELLER and are, inter alia, to compensate SELLER for delaying the eventual sale of the Acquired Property and to compensate SELLER for its costs and expenses associated with this Agreement. CITY hereby waives the rights and benefits of any law, rule, regulation or order now or hereafter existing that would allow CITY to claim a refund of the Deposit as unearned earnest money, a penalty or for any other reason except default by SELLER.

13.3 CITY's Remedies for SELLER's Default. If SELLER fails to complete the sale of the Acquired Property in accordance with this Agreement, CITY shall have and may enforce the following exclusive remedies: (a) seek specific performance; (b) terminate this Agreement, receive a refund of the Deposit and recover from SELLER all of CITY's actual third-party costs and expenses incurred by it in connection with the transaction and the Project; or (c) seek rescission of this Agreement and receive a refund of the Deposit.

14. Notices. All notices, demands and other communications required or permitted to be given hereunder shall be in writing, and shall be sent by personal delivery (including by means of professional messenger or courier service) or registered or certified mail, postage-prepaid, return-receipt requested. Notice shall be deemed to have been given if personally delivered, upon receipt, and if sent by mail, two (2) days after duly deposited in the U.S. Mail. The parties' respective addresses for notices are as follows:

If to City: City of Auburn
Human Resources Department
25 West Main Street
Auburn, WA 98001-4998
Attn: Planning Director

With copies to: City Attorney's Office
City of Auburn
25 West Main Street
Auburn, WA 98001-4998
Attn: City Attorney

If to SELLER: Safeway, Inc.
Gary Slabaugh
1121 124th Ave NE
Bellevue, WA 98005

With copies to: Sharman Braff
Real Estate Law
Safeway Inc.
5918 Stoneridge Mall Rd.
Pleasanton, CA 94588

Notice of change of address shall be given by written notice in the manner detailed in this Section 14.

15. General. This is the entire agreement of CITY and SELLER with respect to the matters covered hereby and supersedes all prior agreements between them, written or oral. This Agreement may be modified only in writing, signed by CITY and SELLER. Any waivers hereunder must be in writing. No waiver of any right or remedy in the event of default hereunder shall constitute a waiver of such right or remedy in the event of any subsequent default. This Agreement shall be governed by the laws of the State of Washington. This Agreement is for the benefit only of the parties hereto and shall inure to the benefit of and bind the heirs, personal representatives, successors and permitted assigns of the parties hereto. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision hereof.

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

16. Commissions. SELLER represents to CITY that SELLER has engaged no broker, agent or finder in connection with the negotiations leading to this Agreement. CITY represents to SELLER that CITY has not engaged or in any way dealt with any broker, agent or finder in connection with the negotiations leading to this Agreement. Each party hereby agrees to indemnify, defend and hold the other party harmless from and against any claims for broker's, agent's, or finder's fees or commissions arising from or through the actions of the indemnifying party.

17. Attorneys' Fees. In the event suit or action is instituted to interpret or enforce the terms of this Agreement, the prevailing party therein shall be entitled to recover from the other party such sum as the Court may adjudge reasonable as attorneys' fees, including fees incurred at trial, on any appeal and in any petition for review.

18. Exclusivity. During the term of this Agreement SELLER shall not market nor list the Acquired Property for sale, nor accept any offers from third parties with respect to sale of the Acquired Property.

19. Reservation of Police Power. Notwithstanding anything to the contrary set forth herein, SELLER understands and acknowledges that the CITY's authority to exercise its police (regulatory) powers in accordance with applicable law shall not be deemed limited by the provisions of this Agreement.

20. City Council Approval. The Seller acknowledges that this Agreement does not bind the City of Auburn until the City Council approves of the purchase Agreement and the Mayor executes the Agreement.

21. Exhibits. Exhibits "A," "B," and "C," attached hereto are incorporated herein as if fully set forth.

SIGNED in duplicate original as of the date first above written.

CITY OF AUBURN

SAFEWAY, INC.

Peter B. Lewis, Mayor

Attest:

Danielle Daskam, City Clerk

Approved as to form:

Daniel B. Heid, Auburn City Attorney

By Ann C. Elliott

Name Ann C. Elliott

Title ASSISTANT VICE PRESIDENT

By Wendall Mitchell

Name WENDALL MITCHELL

Title ASSISTANT SECRETARY

EXHIBITS

Exhibit A, Warranty Deed

Exhibit B, Declaration of Covenants, Conditions, Easements and Restrictions

Exhibit C, Maintenance Agreement

FORM APPROVED SB by DP

SIGNED in duplicate original as of the date first above written.

CITY OF AUBURN

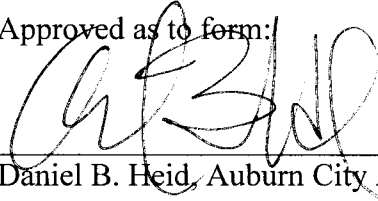
SAFEWAY, INC.

Peter B. Lewis, Mayor

Attest:

Danielle Daskam, City Clerk

Approved as to form:



Daniel B. Heid, Auburn City Attorney

By _____

Name _____

Title _____

By _____

Name _____

Title _____

EXHIBITS

Exhibit A, Warranty Deed

Exhibit B, Declaration of Covenants, Conditions, Easements and Restrictions

Exhibit C, Maintenance Agreement

EXHIBIT A - DEED

Return Address:
City of Auburn
City Clerk
25 West Main
Auburn, WA 98001

Above this line reserved for recording information.

WARRANTY DEED

Reference # (if applicable):	N/A
Grantor/Borrower:	Safeway Inc.
Grantee/Assignee/Beneficiary:	City of Auburn
Legal Description/STR:	Portion of Sec. 25, Twp. 21 N. Rge. 4 E., WM
Assessor's Tax Parcel ID#:	2521049096 (portion) Benefited Parcel - 2521049114

For and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, Grantor, **SAFEWAY INC.**, a Delaware corporation, hereby conveys and warrants to the **CITY OF AUBURN**, Grantee herein, a municipal corporation of the State of Washington, its successors and assigns, the property legally described and depicted in Exhibit "A," attached hereto and incorporated herein by this reference (the "Acquired Property"), reserving an access easement as set forth below.

Grantor shall reserve a non-exclusive easement (the "Easement") for Grantor's use and use by its heirs, assigns, successors, agents, employees, invitees and licensees, for the benefit of the Safeway Property, as described herein, over a portion of the Acquired Property, which Easement is legally described and depicted in Exhibit "B," attached hereto and incorporated herein by this reference (the "Easement Area") under the following terms.

a. The Easement Area shall be for Grantor's "emergency use," for ingress and egress to the property legally described and depicted in Exhibit "C," attached hereto and incorporated herein by this reference (the "Safeway Property"), so long as Grantor's use does not restrict or curtail Grantee's use of the Easement Area, or interfere with Grantor's use of the Safeway Property.

b. For the purposes hereof, "emergency use" by Grantor means a temporary use by Grantor of the Easement Area necessitated by either (i) a blockage of all other access routes available to Grantor to enter or exit Grantor's facilities on the Safeway Property, where the blockage is caused by a public works project, an outside utility

EXHIBIT A - DEED

Return Address:
City of Auburn
City Clerk
25 West Main
Auburn, WA 98001

Above this line reserved for recording information.

WARRANTY DEED

Reference # (if applicable):	N/A
Grantor/Borrower:	Safeway Inc.
Grantee/Assignee/Beneficiary:	City of Auburn
Legal Description/STR:	Portion of Sec. 25, Twp. 21 N. Rge. 4 E., WM
Assessor's Tax Parcel ID#:	2521049096 (portion) Benefited Parcel - 2521049114

For and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, Grantor, **SAFEWAY INC.**, a Delaware corporation, hereby conveys and warrants to the **CITY OF AUBURN**, Grantee herein, a municipal corporation of the State of Washington, its successors and assigns, the property legally described and depicted in Exhibit "A," attached hereto and incorporated herein by this reference (the "Acquired Property"), reserving an access easement as set forth below.

Grantor shall reserve a non-exclusive easement (the "Easement") for Grantor's use and use by its heirs, assigns, successors, agents, employees, invitees and licensees, for the benefit of the Safeway Property, as described herein, over a portion of the Acquired Property, which Easement is legally described and depicted in Exhibit "B," attached hereto and incorporated herein by this reference (the "Easement Area") under the following terms.

a. The Easement Area shall be for Grantor's "emergency use," for ingress and egress to the property legally described and depicted in Exhibit "C," attached hereto and incorporated herein by this reference (the "Safeway Property"), so long as Grantor's use does not restrict or curtail Grantee's use of the Easement Area, or interfere with Grantor's use of the Safeway Property.

b. For the purposes hereof, "emergency use" by Grantor means a temporary use by Grantor of the Easement Area necessitated by either (i) a blockage of all other access routes available to Grantor to enter or exit Grantor's facilities on the Safeway Property, where the blockage is caused by a public works project, an outside utility

EXHIBIT A - DEED

project or an unforeseen accident or event in the public right-of-way or (ii) a business necessity of Grantor's, provided that Grantor shall first request Grantee's permission for emergency use as a business necessity, which Grantee shall not unreasonably withhold, delay or condition. Grantor's right to use the Easement Area shall cease as soon as the blockage of any other access routes is removed or cleared or the business necessity no longer exists.

c. Grantor may further use the Easement Area for regular non-emergency access to the Safeway Property if, and only if, Grantor makes, at its sole cost and expense, any necessary physical improvements and pays any transportation improvement costs or fees in accordance with applicable law at the time Grantor chooses to make regular non-emergency use of the Easement Area for access. Such regular non-emergency use and improvements shall not restrict or curtail Grantee's use of the Easement Area.

d. Grantee agrees at such time as it modifies the existing fence on the Acquired Property, it will construct a fence, along the Southerly boundary of the Acquired Property, tying it into the existing fences extending to the South onto the Safeway Property. Said fence to be constructed of compatible materials to the existing fences and to include a manual, chain link gate at a location to be agreed upon, sized to allow 2-way truck traffic. All fence work shall be done in a manner that will maintain Safeway's security at all times.

e. The Easement and its terms shall constitute a covenant running with the Safeway Property and burden the Acquired Property, and shall be binding on the successors, heirs and assigns of the parties hereto, for the benefit of the Safeway Property, as specified herein.

For and in consideration hereof, THE PARTIES HERETO FURTHER AGREE as follows:

EXHIBIT A - DEED

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by its proper officer(s) this _____ day of _____, 2010.

Grantor:

Safeway Inc.

By: _____

Its: Assistant Vice-President

By: _____

Its Assistant Secretary

Date Signed: _____

Grantee:

The City of Auburn

By: _____

Its: _____

Date Signed: _____

STATE OF _____)
)ss.
County of _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of Safeway Inc., a corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated _____

STATE OF WASHINGTON)
)ss.
County of King)

Notary Public in and for the State of _____
residing at _____
My appointment expires _____

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of the City of Auburn, a Washington municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated _____

Notary Public in and for the State of _____
residing at _____
My appointment expires _____

EXHIBIT A - DEED

EXHIBIT "A"

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 21 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, KING COUNTY, WASHINGTON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE NORTH 430 FEET OF LOT 1 OF THE CITY OF AUBURN LOT LINE ADJUSTMENT NO. LLA02-0015, AS RECORDED UNDER RECORDING NO. 20020725001632, RECORDS OF SAID COUNTY, AS MEASURED PERPENDICULAR TO THE MOST NORTHERLY LINE OF SAID LOT 1, SAID MOST NORTHERLY LINE BEARING SOUTH 89° 12' 14" EAST, A DISTANCE OF 57.79 FEET.

SAID PROPERTY BEING A PORTION OF KING COUNTY ASSESSOR'S TAX PARCEL NO. 2521049096.

EXHIBIT A - DEED

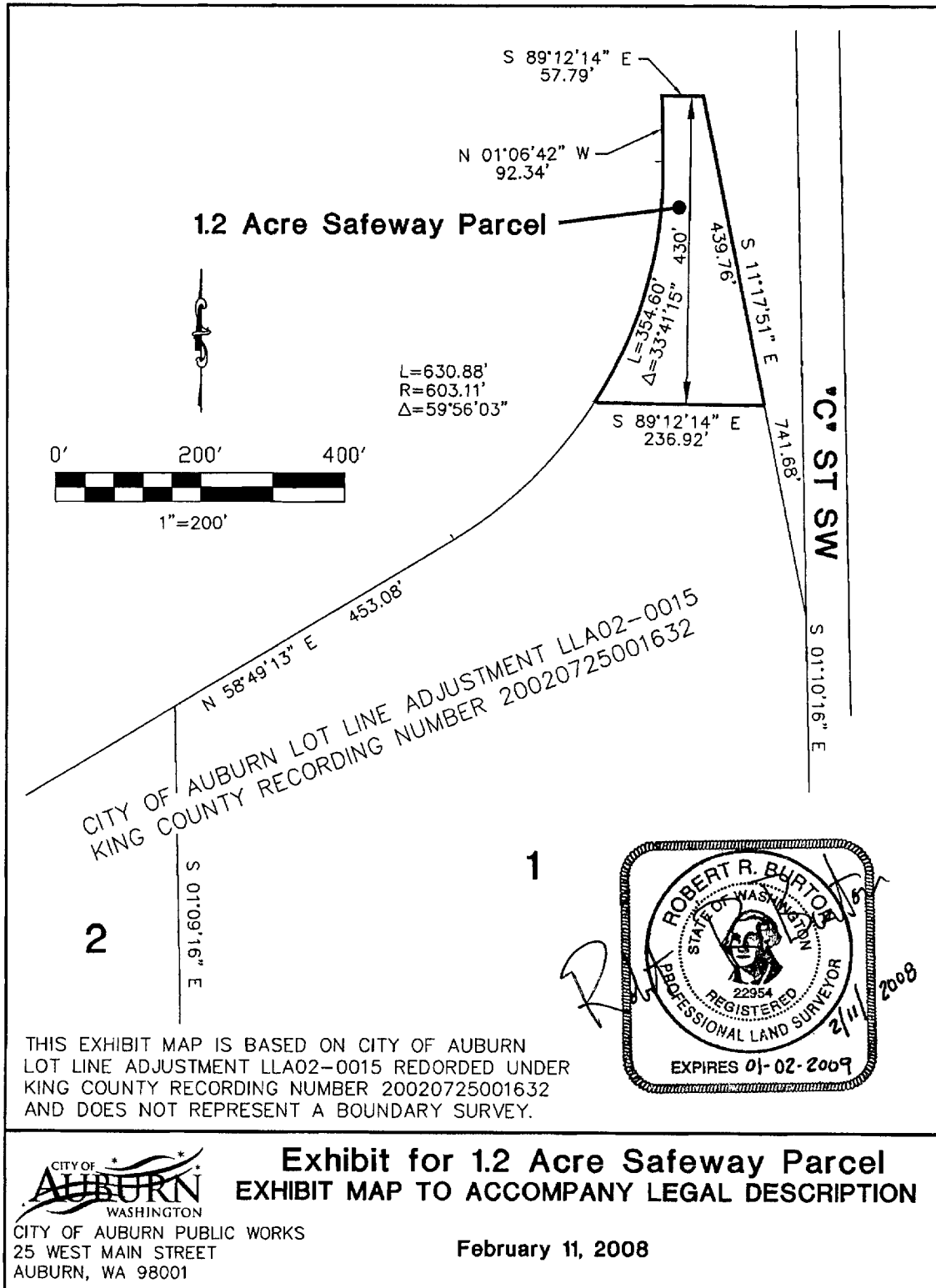


EXHIBIT A - DEED

EXHIBIT "B"

LEGAL DESCRIPTION OF THE EMERGENCY ACCESS ROAD

THAT PORTION OF LOT 1 OF CITY OF AUBURN LOT LINE ADJUSTMENT NUMBER LLA02-0015, RECORDED UNDER RECORDING NUMBER 20020725001632, RECORDS OF KING COUNTY, WASHINGTON, SAID PORTION BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST NORTHERLY NORTHEAST CORNER OF SAID LOT 1;

THENCE SOUTH 11°17'51" EAST ALONG THE EAST LINE OF SAID LOT 1 A DISTANCE OF 376.73 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 11°17' 51" EAST ALONG SAID EAST LINE OF SAID LOT 1 A DISTANCE OF 63.03 FEET TO A LINE PARALLEL WITH AND 430.00 FEET SOUTH OF THE NORTH LINE OF SAID LOT 1;

THENCE NORTH 89°12'14" WEST ALONG SAID PARALLEL LINE A DISTANCE OF 236.92 FEET TO THE WESTERLY EDGE OF SAID LOT 1 AND BEGINNING OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 603.11 FEET (THE RADIUS CENTER OF SAID CURVE BEARS NORTH 57°25'35" WEST);

THENCE NORTHEASTERLY ALONG SAID WESTERLY EDGE OF SAID LOT 1 AND ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 8°51'16" AN ARC LENGTH OF 93.20 FEET;

THENCE LEAVING SAID WESTERLY EDGE SOUTH 78°37'49" EAST A DISTANCE OF 82.17 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 395.00 FEET;

THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 12°32'27" AN ARC LENGTH OF 86.46 FEET;

THENCE NORTH 88°49'44" EAST A DISTANCE OF 14.13 FEET TO THE EAST LINE OF SAID LOT 1 AND THE TRUE POINT OF BEGINNING.

THE ACCESS ROAD CONTAINS 14,406 SQUARE FEET (0.331 ACRES), MORE OR LESS.

EXHIBIT A - DEED

(THE BASIS OF BEARINGS FOR THIS DESCRIPTION IS CITY OF AUBURN LOT LINE ADJUSTMENT LL02-0015 RECORDED UNDER KING COUNTY RECORDING NUMBER 20020725001632.)

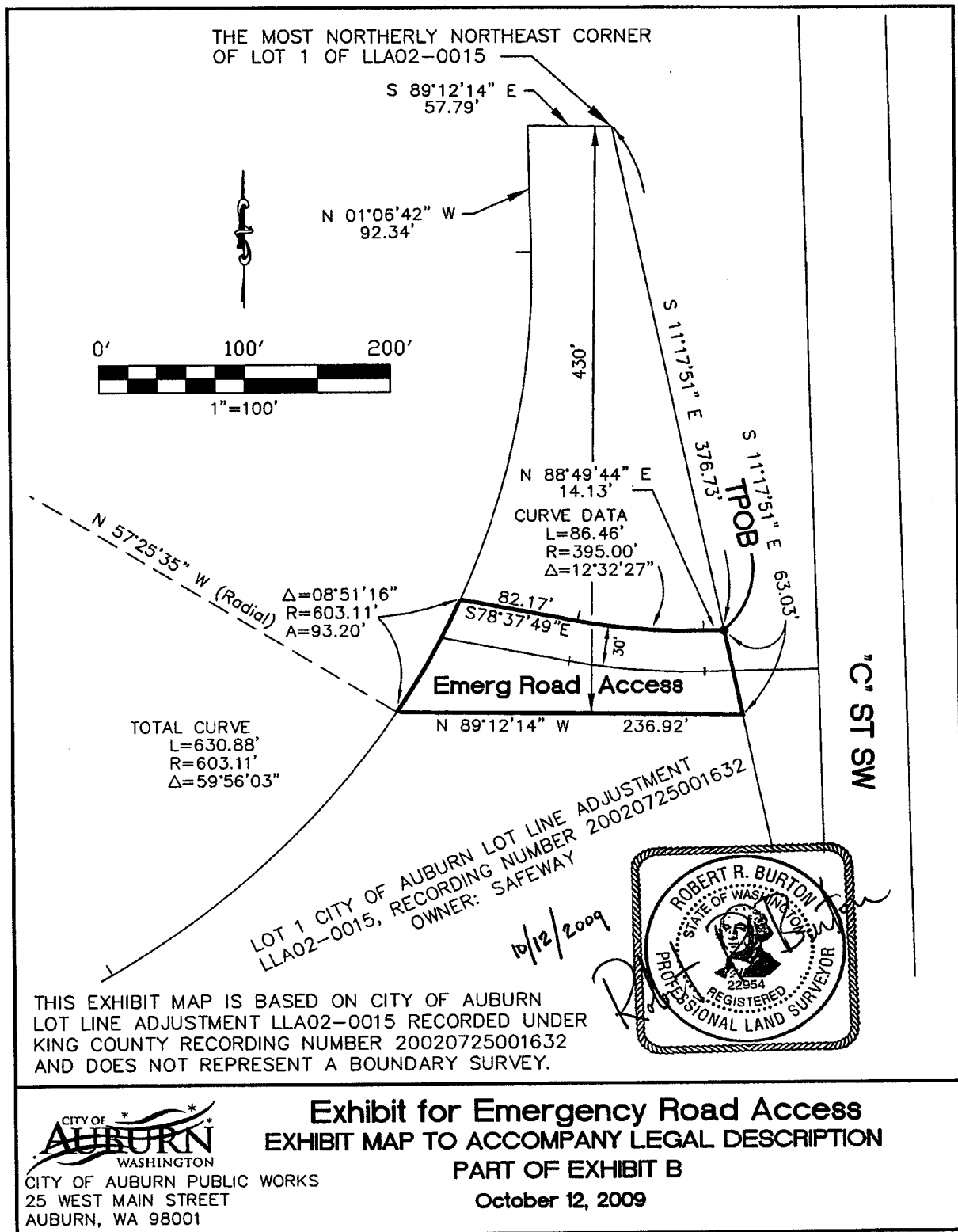


EXHIBIT A - DEED

EXHIBIT "C"

BENEFITED PROPERTY

LOT 1 OF CITY OF AUBURN LOT LINE ADJUSTMENT NUMBER LLA02-0015, RECORDED UNDER RECORDING NUMBER 20020725001632, RECORDS OF KING COUNTY, WASHINGTON,

EXCEPT THE NORTH 430 FEET OF LOT 1 OF SAID CITY OF AUBURN LOT LINE ADJUSTMENT NUMBER LLA02-0015, AS RECORDED UNDER RECORDING NUMBER 20020725001632, RECORDS OF SAID COUNTY, AS MEASURED PERPENDICULAR TO THE MOST NORTHERLY LINE OF SAID LOT 1, SAID MOST NORTHERLY LINE BEARING SOUTH 89° 12' 14" EAST, A DISTANCE OF 57.79 FEET.

PLEASE RECORD AND WHEN
RECORDED, RETURN TO:

Gerald Bresslour
Office of the General Counsel
The Boeing Company
P.O. Box 3707, MC 13-08
Seattle, WA 98124



20020920001614

TRANSACTION TI DPC
PAGE 001 OF 033
09/20/2002 12:30
KING COUNTY, WA

51.00

2002 092 0001614

9054490

33/51

DOCUMENT TITLE: Declaration of Covenants, Conditions, and
Restrictions

REFERENCE NUMBERS OF RELATED DOCUMENTS:

GRANTOR/BORROWER: The Boeing Company and Safeway Inc.

GRANTEE/ASSIGNEE/BENEFICIARY:

LEGAL DESCRIPTION: Portions of Sections 24 and 25, T21N, R4E,
W.M., in King County, Washington, as more
fully described in Exhibits A and B,
beginning on page 22.

ASSESSOR'S PARCEL NO(S).: 242104-9069; 242104-9089;
242104-9090; 242104-9091; 242104-9092; 242104-9093;
242104-9094; 242104-9095; 252104-9035; 252104-9078;
252104-9080; 252104-9082; 252104-9094; 252104-9096;
252104-9104; 252104-9105; 252104-9106; 252104-9107;
and 252104-9108.

FILED FOR RECORD AT THE REQUEST OF
TRANSACTION TITLE INSURANCE CO.

DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS, AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS, AND RESTRICTIONS (this "Declaration") is made this 20th day of SEPTEMBER, 2002, by and between THE BOEING COMPANY, a Delaware corporation ("Boeing"), and SAFEWAY INC., a Delaware corporation ("Safeway"), collectively, the "Parties, and each of the Parties is occasionally hereinafter referred to as a "Party."

RECITALS

A. Boeing is the owner of certain real property located in King County, Washington and legally described on Exhibit A (the "Boeing Property").

B. Safeway is the owner of certain real property also located in King County, Washington, and legally described on Exhibit B (the "Safeway Property"). Safeway intends to develop and initially use the Safeway Property as a warehouse and distribution facility as approximately depicted on the site plan that is Exhibit C hereto (the "Site Plan").

C. Boeing, as the owner of the Boeing Property, and Safeway, as the owner of the Safeway Property, have agreed to make the Boeing Property and the Safeway Property (collectively, the "Site") subject to certain covenants, conditions and restrictions that shall run with such land

NOW, THEREFORE, in consideration of the forgoing and the mutual conditions hereinafter contained, the Parties agree as follows:

1. DEFINITIONS AND PURPOSE.

1.1 Building Restrictions. All buildings and other improvements on the Site, or any part thereof and all plans for development or redevelopment of the Site or any part thereof shall conform to the requirements of this Declaration.

1.2 Road and Street Designations. Designations of roads and streets in this Declaration shall be deemed to apply to the streets referred to herein as designated and laid out on the date hereof, provided that this Declaration shall continue

2002 092 0001614

to apply to said streets and roads if called by a different name at any time in the future and/or if aligned differently in the future from their alignment on the date hereof.

1.3 Owners. An "Owner" is any party that owns fee title to any portion of the Site and the "Owners" are all of the fee owners of any portion of the Site from time to time. Nothing in this Declaration shall prevent an Owner from delegating and assigning its rights and obligations under this Declaration to any party that leases all, or substantially all of the portion of the Site owned by such Owner (provided, further, however, no such delegation shall discharge or relieve any Owner from its obligations hereunder). Any such delegation must be set forth in a writing executed by such delegating Owner and recorded in the "Records" (as hereinafter defined).

1.4 Records. "Records" means the Official Records of King County, Washington.

2. TERM. The restrictions declared, reserved, granted and established hereby shall continue in full force and effect in perpetuity. This Declaration may be terminated or modified only by a written instrument executed by all of the then Owners of the Site and recorded in the Records.

3. COVENANTS, CONDITIONS, AND RESTRICTIONS. Boeing, with respect to the Boeing Property, and Safeway, with respect to the Safeway Property, each covenants that the Site will be used by the Parties and by all of their respective successors-in-interest, and by all occupants of the Site in compliance with and subject to the following:

3.1 Permitted Uses; Prohibition of Certain Uses. Unless otherwise agreed in writing by the Owners, the Site shall not be used for any purpose that is not permitted under, or would be a nonconforming use under, the applicable zoning ordinances and land use regulations in effect from time to time unless such use is authorized by the applicable land use authority having jurisdiction of the Site. Under no circumstances shall the Site be used in any way for or in connection with (a) the sale or display of pornographic, obscene, or so-called "adult" literature, periodicals, movies, videos, pictures, photographs, or the like; (b) the presentation of so-called "adult" entertainment; (c) the operation of a strip club,

gentlemen's club, or an establishment providing entertainment in the form of table or lap dancing or (d) the sale, distribution, or display of paraphernalia that are used in connection with any illegal drug. No public or private obnoxious use or nuisance shall be permitted to exist or operate upon the Site. No rubbish, trash, waste, residue, brush, weeds, undergrowth, or debris of any kind or character shall ever be placed or permitted to accumulate upon the Site, but the foregoing is not intended to prohibit wetlands areas or naturalized areas that may be required by a governmental authority or desired by an Owner of a portion of the Site in connection with development of the Site. All buildings on the Site shall be kept in good repair and condition.

3.2 Cooperation with and No Objection to Formation of Drainage District or Owners' Association. If the Owner of the Boeing Property shall take action to form an association of all or some of the property owners whose property conducts storm or surface water drainage into the drainage canal known as "Government Canal" (which is legally described in Exhibit D) or if the Safeway Property is proposed for inclusion in a drainage district, local improvement district, or other public body having the purpose of managing all or some storm and surface water that drains into Government Canal, the Owner of the Safeway Property shall not object to, and shall provide good faith cooperation in, the formation of such association, drainage district, local improvement district, or public body (as the case may be, the "Drainage Authority") so long as:

(a) the financial burden of the Drainage Authority is equitably apportioned among all of the property subject thereto (and an allocation shall be deemed equitable if it is materially equivalent to the allocation provided for in that certain Drainage Agreement between Boeing and Safeway dated as of the date hereof and recorded in the Records the same day that this Declaration is recorded (the "Drainage Agreement");

(b) the scheme for the management and administration of the Drainage Authority, including the election of the board of directors thereof, is fair and equitable; and

(c) the construction of any improvements by the Drainage Authority will not materially and adversely affect business operations of the Safeway Property.

3.3 Easements. Safeway, as the Owner of the Safeway Property, hereby grants Boeing, as the Owner of the Boeing Property, the following easements over the Safeway Property for the benefit of the Owner or Owners of the Boeing Property. Each such easement shall be deemed to include the reasonable right of ingress and egress over the Safeway Property to perform the activities described in Sections 3.3(a) through (e) below. In exercising such rights, Boeing agrees to comply with Safeway's reasonable security measures, which, except with respect to the right described in Section 3.3(a), shall include one (1) business day's prior written notice of entry and Safeway's right to accompany Boeing's representatives on-site, provided that in the case of an emergency, Boeing may enter the Safeway Property without giving such notice and without an accompanying Safeway representative, but only for such period as is necessary to deal with such emergency. The parties acknowledge that certain utility installations that have been and may continue to be used by Boeing may be or will be abandoned at some time in the future. Such installations include without limitation certain natural gas lines and certain fiber-optic lines. Such installations, when abandoned by Boeing (or by the applicable utility purveyor) may be left in place.

(a) Rail Easement. An exclusive and perpetual easement (the "Rail Easement") over the area (the "Rail Easement Area") described in Exhibit E for the operation and maintenance of a rail line serving the Boeing Property. The Rail Easement Area shall be fenced off from the balance of the Safeway Property by Boeing pursuant to that certain Demolition Agreement between Boeing and Safeway dated as of the date hereof and such fence and related facilities shall thereafter be maintained by Boeing in good condition and repair by the Owner or Owners of the Boeing Property at no expense to the Owners of the Safeway Property. Safeway reserves the right to enter on the Rail Easement Area to inspect the same and the fence between the Rail Easement Area and the balance of the Safeway Property shall include locked gates for Safeway to use to access the Rail Easement Area for such purposes, but, except in an emergency, Safeway shall not access the Rail

Easement Area for such purpose without giving the Owner or Owners of the Boeing Property not less than twenty-four (24) hours telephonic or written notice of such entry. The Owner or Owners of the Boeing Property shall have the right to accompany Safeway's representatives on-site. Safeway and Boeing each shall have keys, combinations or security codes to such gates. Safeway shall not interfere with Boeing's use of the Rail Easement Area. At such time, if any, that the rail line is abandoned by the Owner or Owners of the Boeing Property, said Owner or Owners shall, at their expense, remove such fencing, remove the rail lines and the improvements appurtenant thereto, and shall rough grade the Rail Easement Area and quitclaim its easement rights with respect to the Rail Easement Area to the Owner of the Safeway Property. Boeing may terminate such Rail Easement at any time by giving written notice of such termination to the Owner of the Safeway Property, but Boeing shall not be deemed to have abandoned or terminated such Rail Easement unless Boeing shall give such written notice of termination.

(b) Wells. A nonexclusive easement to enter the Safeway Property for the purpose of obtaining readings from monitoring wells as shown on the Site Plan and taking samples from such wells and for the maintenance, repair, replacement, renewal, decommissioning, and closing of such wells. Such easement shall terminate after the Washington State Department of Ecology ("DOE") and the United States Environmental Protection Agency ("USEPA") remove all requirements for the continuation of such monitoring. Upon the removal of all such requirements, the Owner or Owners of the Boeing Property, at no expense to the Owner of the Safeway Property, shall close and decommission all such test wells in accordance with applicable regulations, and upon such wells being so decommissioned, such easement shall terminate. While the wells are located on the Safeway Property, they shall be maintained in a good state of repair and operation in accordance with applicable legal requirements by the Owner or Owners of the Boeing Property at no expense to the Owner of the Safeway Property. Upon request by Safeway, Boeing shall provide Safeway with the logs for such wells at no charge. The Owners of the Boeing Property shall provide the Owner of the Safeway Property with copies of all reports provided to the DOE and/or USEPA with respect to such wells and monitoring activities and copies of any written communications received

2002 092 0001614

0002 092 0001614

by the Owner of the Boeing Property from DOE, USEPA or any other governmental authority over such wells (as the case may be, an "Environmental Authority") with respect to such wells or test results. If an Environmental Authority orders, or indicates in writing that it may order, the installation of additional monitoring wells on the Safeway Property, the Owner or Owners of the Boeing Property shall give the Owner of the Safeway Property written notice thereof as soon thereafter as is reasonably possible. So long as the proposed locations of such additional wells and the manner of their installation shall not unreasonably interfere with either the business operations on the Safeway Property or the planned development or redevelopment of the Safeway Property, Safeway shall not unreasonably withhold its consent to the installation of such additional wells. Notwithstanding the foregoing, if Safeway reasonably believes that the location of such additional wells will interfere with either Safeway's business operations on the Safeway Property or the planned development or redevelopment of the Safeway Property, Safeway reserves the right to contest the particular location of any such wells, and with respect to such contest, the Owners of the Safeway Property shall hold the Owners of the Boeing Property free and harmless with respect thereto. Such contest shall be conducted by advising the Owner of the Boeing Property of Safeway's objections. Boeing shall provide such objections to the Environmental Authority and both Safeway and Boeing shall provide representatives who shall be present when such objections are discussed with the Environmental Authority. Upon the installation of such additional wells, the Site Plan shall be amended to indicate their locations by an amendment to this Declaration that shall be recorded in the Records and the easement granted to the Owners of the Boeing Property pursuant to this Section 3(b) shall be deemed to apply to such additional wells. As contemplated by Section 11.6 of that certain Agreement of Purchase and Sale dated April 18, 2002 (as amended, the "Purchase Agreement") made by and between Boeing and Safeway, Boeing, and not Safeway, shall be responsible for satisfying all conditions (including, but not limited to, paying the cost thereof) imposed in connection with completing the terms and conditions of that certain Agreed Order No. DE 01HWTRNR-3345, as amended by that certain Stipulated Amendment No. 1 to Agreed Order No. DE 01HWTRNR-3345, provided, however, Safeway shall not obstruct Boeing's efforts to satisfy such terms and conditions. Boeing's

obligations pursuant to (i) the immediately preceding sentence and (ii) the Purchase Agreement shall not be terminated or limited by Section 6 hereto.

2002 092 0001614

(c) Utility, Telecommunication, Data, and Other Lines. An exclusive, perpetual easement over the areas described in Exhibit F (the "Utility Easement Area") for the installation, use, maintenance, repair, replacement, or enhancement of utility, telecommunication, data, and other service lines located in the Utility Easement Area; provided, however, if Safeway dedicates any portion of the Utility Easement Area along "C" Street to the City of Auburn or another governmental authority, then the area of such easement along "C" Street shall move to the west away from "C" Street by one foot for each foot dedicated. In the event of any such dedication, either of the parties shall have the right to have the legal description of the Utility Easement Area amended to reflect such dedication and the application of the preceding sentence. The Owner or Owners of the Boeing Property may license the use of said lines to third parties without the payment of any fees, charges, or other amounts to the Owner or Owners of the Safeway Property. During the term of this Declaration, the Utility Easement Area, together with all facilities installed therein, shall be maintained in a good state of repair and operation in accordance with applicable legal requirements by the Owner or Owners of the Boeing Property at no expense to the Owner of the Safeway Property. Boeing may terminate such easements at any time by giving written notice of such termination to the Owner of the Safeway Property, but Boeing shall not be deemed to have abandoned or terminated such easements unless Boeing shall give such written notice of termination. Upon such termination, the utility installations located in the Utility Easement Area may be abandoned in place.

(d) Monuments. An exclusive, perpetual easement over the areas described in Exhibit G (the "Monument Easement Areas") for the installation, maintenance, repair, replacement, or enhancement of monuments and associated landscaping. During the term of this Declaration, the Monument Easement Area, together with all facilities installed therein, shall be maintained in a good state of repair and operation in accordance with applicable legal requirements by the Owner or Owners of the Boeing Property at no expense to

2002 092 0001614

the Owner of the Safeway Property. Boeing may terminate such easement at any time by giving written notice of such termination to the Owner of the Safeway Property, but Boeing shall not be deemed to have abandoned or terminated such easement unless Boeing shall give such written notice of termination. Upon such termination, the monuments located in the Monument Easement Area may be abandoned in place.

(e) Drainage Line. An exclusive, perpetual easement over the area described in Exhibit H (the "Drainage Easement Area") for the installation, use, maintenance, repair, replacement, or enhancement of storm and surface water drainage facilities. During the term of this Declaration, the Drainage Easement Area, together with all facilities installed therein, shall be maintained in a good state of repair and operation in accordance with applicable legal requirements by the Owner or Owners of the Boeing Property at no expense to the Owner of the Safeway Property. The foregoing shall not be deemed to prevent, limit or restrict the liability of the Owners of the Safeway Property with respect to the drainage of storm and surface water from the Safeway Property onto the Boeing Property as provided in the Drainage Agreement.

The Utility Easement Area, the Monument Easement Area and the Drainage Easement Area are approximately depicted on the Site Plan. Each of the easements granted to the Owner of the Boeing Property hereby are appurtenant to the Boeing Property, are not in gross, and may not be sold or conveyed to any party except as part of the sale or conveyance of the Boeing Property, or some portion thereof, to such party (except that the Owner of the Boeing Property may license or sublicense the right to use facilities or installations that are placed in such easement areas described in Sections 3[a] and [c] hereof so long as such facilities or installations are consistent with the purposes for which such easements are granted hereby). Notwithstanding the foregoing, if any portion of the Boeing Property is conveyed to a third party by Boeing, Boeing need not convey the benefits of such easements, in whole or in part, as it may elect (provided, however, the foregoing provision of this sentence shall be construed to relieve the property conveyed to such grantee from the provisions of this Declaration). Safeway, as grantor and for itself and its successors and assigns, reserves and retains the right to use the surface of the Utility Easement Area, Monument Easement

Area (to the extent not improved from time to time by Boeing's permitted improvements thereon) and Drainage Easement Area; provided, however, Safeway, as grantor and for itself and its successors and assigns, agrees not to erect, place or maintain any building or other structures thereon except walls, fences, paving and parking lots, landscaping and, with respect to the southern portion of the Drainage Easement Area, storm and surface detention and drainage facilities. With respect to its use of the Utility Easement Area, Monument Easement Area and Drainage Easement Area, Boeing shall not unreasonably interfere with the use thereof by Safeway or its successors or assigns and in making any excavation on said property, Boeing shall restore the surface of the ground to as near the same condition as existed prior to such excavation as practicable.

3.4 Access to the Property. The Owner of the Safeway Property shall not use Pacific Avenue as its primary point of ingress to and egress from the Safeway Property by trucks delivering goods to the Safeway Property. The facility on the Safeway Property shall be screened from view from Pacific Avenue by evergreen trees that shall be planted, maintained and replaced at the expense of the Owner of the Safeway Property. Any such trees initially planted or planted as replacements therefor shall be at least six feet (6') in height.

3.5 Release and Indemnity Regarding Development Mitigation Costs Safeway, as the Owner of the Safeway Property and for itself and its successors and assigns, and Boeing, as the Owner of the Boeing Property and for itself and its successors and assigns, each (in this Section 3.5, the "Indemnitor") shall release the other Owner or Owners of any other portion of the Site from, and shall indemnify and hold harmless each such other Owner or Owners from and against, any and all construction costs, fees, or charges associated with the development or redevelopment of all or any portion of the Site owned by Indemnitor, whether such obligation takes the form of construction of public or private improvements, the payment of mitigation or impact fees or the payment of assessments levied by any improvement district formed to finance the construction of any such improvements.

3.6 Objections Related to Development. The Owner or Owners of any portion of the Site shall not object to any

2002 092 0001614

governmental agency with respect to any development or redevelopment on, or proposed for, any other portion of the Site if such development or redevelopment conforms to the requirements of this Declaration so long as (a) such development or redevelopment conforms to the requirements of this Declaration, and (b) the conditions to such development or redevelopment shall not materially and adversely impact such Owner's use and operation of its property.

3.7 Obligations Under Easement Deed. Boeing, at no expense to the Owner of the Safeway Property, shall discharge all obligations imposed on the Owners of the Site, or any portion thereof, pursuant to that certain Easement Deed recorded February 22, 1989, as Instrument No. 890222095 of the Records, and shall defend, protect, indemnify and hold the Owner of the Safeway Property free and harmless with respect thereto.

3.8 Obligations Under Environmental Mitigation Agreement. Boeing, at no expense to the Owner of the Safeway Property, shall discharge all obligations imposed upon the Owners of the Site, to the extent that such obligations remain undischarged, pursuant to that certain Environment Mitigation Agreement dated December 30, 1990, a copy of which is attached as Exhibit A to that certain Resolution of the City Council of Auburn, Washington recorded January 2, 1991, as Instrument No. 91010241 of the Records and shall defend, protect, indemnify and hold the Owner of the Safeway Property free and harmless with respect thereto.

3.9 Natural Gas Lines. The Boeing Property is served by natural gas pipelines on the Safeway Property, which are shown as easements 21A, 21B, and 21C on Barghausen Survey, drawing No. 10094, dated June 11, 2002, and which are installed on the Safeway Property by virtue of an easement recorded in King County, Washington under Recording No. 9207271443 (the "Gas Lines"). If planned use or development of the Safeway Property requires the Owner of the Safeway Property to move or disrupt any of the Gas Lines, or if any of the improvements on the Safeway Property would be placed over any of the Gas Lines, the Safeway covenants that it will arrange for the relocation of the Gas Lines at the expense of the Owner of the Safeway Property. Prior to relocating the Gas Lines, (a) Safeway shall give the Owner of the Boeing Property

written notice thereof and (b) the parties shall agree upon the manner in which the impact of such relocation, including the momentary suspension of service when the switchover is made from the Gas Lines to the replacement lines, shall be minimized to the greatest extent reasonably possible, which agreement shall not be unreasonably withheld or delayed.

4. INDEMNIFICATION AND INSURANCE.

4.1 Indemnification of Owners. Each Owner (in this Section 4.1, the "Indemnifying Party") hereby indemnifies, holds harmless and agrees to defend the other Owners (in this Section 4.1, the "Indemnified Parties") from and against all claims, damages, expenses (including, without limitation, attorneys' fees and reasonable investigative and discovery costs), liabilities and judgments on account of bodily injury to persons, loss of life, or physical damage to property occurring on the Site and on the ways immediately adjoining the Site, caused by the active or passive negligence or willful misconduct of the Indemnifying Party, or its agents, servants or employees; provided, however, the Indemnifying Party does not indemnify the Indemnified Party against any bodily injury, loss of life, or physical damage to the extent it is caused by the active or passive negligence or willful misconduct of the Indemnified Party.

4.2 Liability Insurance Coverage and Limits. Each Owner agrees to maintain, and/or cause to be maintained, at no cost to the other Owners, liability insurance insuring its interests against claims for personal injury, bodily injury, death and property damage occurring on, in or about the Site and the ways immediately adjoining the Site, with a policy limit (covering personal injury liability, bodily injury liability, death and property damage liability) of not less than Five Million Dollars (\$5,000,000) for total claims for any one occurrence. The insurance limits in this Section shall be subject to increase from time to time by such amounts as the Owners may reasonably agree is necessary or desirable, as may be evidenced by the practice of similarly situated properties.

4.3 Policy Requirements. Insurance coverage required by this Agreement may contain the following elements, so long as the required coverage is not diminished, the required limits

are not reduced, and the elements thereof are otherwise commercially reasonable: blanket, layered, umbrella, conventional and/or manuscript forms of policies, as well as retention levels and loss reserves which are charged against earnings or otherwise funded, and commercially reasonable deductibles. Upon request, each Owner shall cause certificates of insurance reasonably evidencing compliance with the requirements of this Section 4 to be delivered to the other Owners. The insurance policies and certificates required by this Section 4 shall require the insurance company to furnish all Owners thirty (30) days prior written notice of any cancellation or lapse, or the effective date of any reduction in the amounts or scope of coverage below the level of insurance required by Section 4.1.

5. ENFORCEMENT. Each Owner shall have the right to enforce this Declaration by obtaining injunctive relief and/or by other lawful means.

6. RELEASE FROM LIABILITY. Any person or entity acquiring fee or leasehold title to any portion of the Site shall be bound by this Declaration only as to the portion thereof acquired by such person or entity. Such person or entity shall be bound by this Declaration only during the period such person or entity is the fee or leasehold owner of such parcel or portion thereof, except as to obligations, liabilities or responsibilities that accrue during said period. Although persons or entities may be released under this Section 6, the easements, covenants and restrictions in this Declaration shall continue to be benefits and servitudes upon the Site running with the land.

7. GENERAL PROVISIONS.

7.1 Runs with Land. The burden and benefits of the covenants, conditions, easements and restrictions contained herein with respect to the Safeway Property shall run with the land described in Exhibit A. The burdens and benefits of the covenants, conditions, easements, and restrictions contained herein with respect to the Boeing Property shall run with the land described in Exhibit B.

7.2 Captions. Any captions to, or headings of, the paragraphs or subparagraphs of this Declaration are solely for

the convenience of the parties hereto, are not a part of this Declaration, and shall not be used for the interpretation or determination of the validity of this Declaration or any provision hereof.

7.3 Exhibits. The exhibits attached hereto are hereby incorporated herein by this reference for all purposes.

7.4 Waiver. The waiver or failure to enforce any provision of this Declaration shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

7.5 Applicable Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Washington, except for any choice-of-law principles that provide for the application of the laws of another jurisdiction.

7.6 Entire Agreement. This Declaration (including all exhibits attached hereto) supersedes any prior agreements, negotiations and communications, oral or written, relating to this subject matter and contains the entire agreement between, and the final expression of, Boeing and Safeway with respect to the subject matter hereof.

7.7 Construction. The parties hereto hereby acknowledge and agree that (a) each party hereto is of equal bargaining strength, (b) each such party has actively participated in the drafting, preparation and negotiation of this Declaration, (c) each such party has consulted with such party's own counsel, and such other professional advisors as such party has deemed appropriate, relating to any and all matters contemplated under this Declaration, (d) each such party and such party's counsel and advisors have reviewed this Declaration, (e) each such party has agreed to enter into this Declaration following such review and the rendering of such advice, and (f) any rule of construction to the effect that ambiguities are to be resolved against the drafting parties shall not apply in the interpretation of this Declaration, or any portions hereof, or any amendments hereto.

7.8 Severability. In the event that any one or more provisions of this Declaration are found to be unenforceable,

the remainder of this Declaration shall nonetheless be and remain valid and enforceable, unless the basic purposes of this Declaration are frustrated thereby.

7.9 No Waiver. No waiver by either party of any default under this Declaration by the other party shall be effective or binding upon such party unless given in the form of a written instrument signed by such party, and no such waiver shall be implied from any omission by such party to take action with respect to such default. No express written waiver of any default shall affect any other default or cover any period of time other than the default and/or period of time specified in such express waiver. One or more written waivers of any default under any provision of this Declaration shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained in this Declaration.

7.10 Attorneys' Fees. In the event either party hereto finds it necessary to employ legal counsel or to bring an action at law or other proceedings against the other party to enforce any of the terms, covenants or conditions hereof, the prevailing party in such action or proceeding, whether at trial or upon appeal, shall be paid all reasonable attorneys' fees, as determined by the court, and in the event any judgment is secured by such prevailing party, all such attorneys' fees shall be included in any such judgment in such action or proceedings.

7.11 Waiver of Jury Trial. The parties desire and intend that any dispute or controversy arising between them with respect to or in connection with this Declaration be subject to expeditious resolution in a court trial without a jury. Therefore, each party irrevocably and unconditionally waives any right it may have to a trial by jury of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding or other hearing brought by any party against another party or parties on any matter whatsoever arising out of, or in any way connected with, this Declaration, the relationship of the parties concerning the subject matter of this Declaration or the documents related thereto or any claim of injury or damage, or the enforcement of any remedy under any statute, law, ordinance, rules or regulation now or hereafter in effect concerning this Declaration. Each of the

parties certifies and acknowledges that (a) it understands and has considered the implications of such waiver, (b) it makes such waiver voluntarily, and (c) it has been induced to enter into this Declaration by, among other things, the mutual waiver and certifications set forth in this Section 7

7.12 Notices. All notices, requests, demands, and other communications hereunder (collectively, "notices") shall be in writing and given by established express delivery service (overnight or better) which maintains delivery records for next business day delivery with all charges prepaid, or hand delivery, to the Parties at the following addresses, or at such other address as a Party may designate by notice to that Party in the above manner:

To Safeway: Safeway Inc.
5918 Stoneridge Mall Road
Pleasanton, CA 94588-3229
Attn: Legal Department
Re: Auburn, WA
Facsimile: (925) 467-3224

With copies to: Safeway Inc.
5918 Stoneridge Mall Road
Pleasanton, CA 94588-3229
Attn: Corporate Real Estate
Re: Auburn, WA
Facsimile: (925) 467-2007

and Safeway Inc.
5918 Stoneridge Mall Road
Pleasanton, CA 94588-3229
Attn: Construction Manager
Facsimile: (925) 457-3508

To Boeing: The Boeing Company
c/o Boeing Realty Corporation
2d Floor, MC 1F-58
7755 East Marginal Way S.
Seattle, WA 98108
Facsimile: (206) 662-1355

With copies to: Boeing Realty Corporation
15480 Laguna Canyon Road, Suite 200

Irvine, CA 92618
Facsimile: (949) 790-1906

Boeing Law Department
3d Floor, MC 13-08
7755 East Marginal Way S
Seattle, WA 98108
Fax: (425) 965-8230

Notices may also be given by facsimile so long as the notice is concurrently given by one of the above methods. Notices given by facsimile are deemed given upon transmission so long as they are transmitted during normal business hours (8:00 a.m. - 5:00 p.m., Monday through Friday, national holidays excluded) at the recipient's location; facsimile notices given after these hours shall be deemed given the next business day thereafter. All other notices are effective upon receipt, or upon attempted delivery if delivery is refused or impossible because of failure to provide a reasonable means for accomplishing delivery.

7.13 No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Declaration shall not be deemed to confer any rights upon, nor obligate either of the parties to any person or entity other than the other party.

7.14 Successors and Assigns. This Declaration shall inure to the benefit of and shall burden the successors and assigns of the parties.

7.15 Construction. This Declaration shall be liberally construed in order to effectuate its purposes.

[The remainder of this page is left blank intentionally.]

IN WITNESS WHEREOF, the Parties have executed this Declaration as of the day and year first hereinabove set forth.

SAFEWAY INC.,
a Delaware corporation

By: [Signature]
Assistant Vice President

By: [Signature]
Assistant Secretary

THE BOEING COMPANY
a Delaware corporation

By: _____
Name: _____
Title: _____

Approved as to Form
Donahue, Gallagher, Woods & Wood, LLP

By: [Signature]

2002 092 0001614

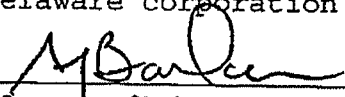
IN WITNESS WHEREOF, the Parties have executed this Declaration as of the day and year first hereinabove set forth.

SAFEWAY INC.,
a Delaware corporation

By: _____
Assistant Vice President

By: _____
Assistant Secretary

THE BOEING COMPANY
a Delaware corporation

By: 
Name: Stephen I. Barker
Title: Authorized Signatory

2002 092 0001614

ACKNOWLEDGMENT

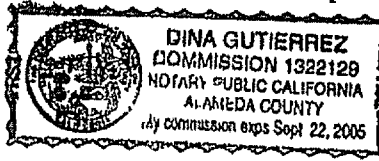
STATE OF CALIFORNIA)

County of Alameda }

ss.

On September 18, 2002 before me, Dina Gutierrez, Notary Public, personally appeared Jerome P. Harrison and Steven J. Gouig personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.



Signature _____

Dina Gutierrez

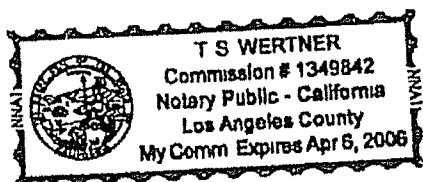
(Seal)

2002 092 0001614

State of California

County of Orange

On September 18, 2002, before me, T S Wertner, Notary Public, personally appeared Stephen J Barker, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument



WITNESS my hand and official seal

TW

2002 092 0001614

EXHIBIT "A"

BOEING PROPERTY

Parcel "A"

Those portions of Sections 24 and 25, Township 21 North, Range 4 East, Willamette Meridian, in King County, Washington, described as follows:

BEGINNING at the center of said Section 25;

THENCE South 89° 46' 07" West, 1,704.35 feet along the centerline of 1st Avenue South (Algona Road) to the Easterly right-of-way of Chicago, Milwaukee, St. Paul & Pacific Railroad;

THENCE Northerly along the Easterly right-of-way of said railroad as conveyed by deeds recorded under King County Recording Nos. 400786, 400787, 400788, 400789, 409800, 409801, and as condemned in King County Superior Court Cause No. 52367 and a copy of the Decree of Appropriation being recorded under King County Recording No. 429349, to the Southwesterly corner of the street conveyed to the City of Auburn by deed recorded under King County Recording No. 6160980;

THENCE Easterly along the South margin of said conveyed street to the Southeasterly corner thereof;

THENCE South 02° 13' 10" East, 5,640.34 feet;

THENCE along a curve to the right whose radius is 603.11 feet through a central angle of 31° 50' 55" for a distance of 336.65 feet;

THENCE South 89° 46' 07" West, 121.20 feet;

THENCE South 08° 47' 00" West, 50.01 feet to the POINT OF BEGINNING;

EXCEPT that portion thereof lying within 1st Avenue North (Algona Road) as established in Volume 31 of Commissioner's Records, page 575;

Portion of Parcel "D":

A parcel of land in the East half of Section 25, Township 21 North, Range 4 East, Willamette Meridian, in King County, Washington, described as follows:

BEGINNING at the intersection of the West right-of-way line of the County Road No. 76, known as Railroad Avenue, and the South line of said Section 25, said intersection being South 89° 16' 55" West, 483.65 feet from the Southeast corner of said Section 25;

THENCE South 89° 16' 55" West, 1,488.93 feet along said South line;

THENCE North 00° 10' 45" East, 1,318.11 feet;

THENCE South 89° 31' 28" West, 658.25 feet to the centerline of Greenhalgh Road;

THENCE North 00° 08' 47" East, 1,321.31 feet along said centerline to a brass plug at the intersection of said centerline with the centerline of Algona Road,

Project Name Boeing Auburn Plant
May 8, 2002

RWG/ath
100041.017.wpd

2002 092 0001614

2002 092 0001614

THENCE CONTINUING North 00° 08' 47" East, 50.01 feet,
THENCE North 89° 46' 07" East, 121.20 feet,
THENCE along a 603.11-foot radius curve to the left having a central angle of 31° 58' 55" for a distance of 336.65 feet,
THENCE North 57° 47' 13" East, 1,272.50 feet;
THENCE along a 603.11-foot radius curve to the left having a central angle of 59° 56' 02" for a distance of 630.88 feet,
THENCE North 02° 08' 50" West, 92.34 feet;
THENCE North 89° 46' 06" East, 57.79 feet,
THENCE South 12° 19' 51" East, 740.55 feet,
THENCE South 02° 12' 33" East, 715.85 feet to a point in the West right-of-way line of said County Road No. 76, which is 597.04 feet from the East quarter corner of said Section 25;
THENCE CONTINUING South 02° 12' 33" East, 2,625.51 feet to the POINT OF BEGINNING;

EXCEPT the Southeasterly portion conveyed to the City of Auburn by deed recorded under King County Recording No. 9212112162;

EXCEPT that portion thereof described as follows

COMMENCING at the Southeast corner of said Section 25,
THENCE North 89° 33' 10" West, along the South line of said Southeast quarter, a distance of 519.40 feet;
THENCE North 00° 28' 50" East, 20.00 feet to the POINT OF BEGINNING;
THENCE North 89° 33' 10" West, 1,453.04 feet,
THENCE North 01° 12' 19" East, 1,299.17 feet,
THENCE North 89° 22' 50" West, 638.13 feet;
THENCE North 01° 10' 46" East, 734.47 feet,
THENCE South 87° 40' 57" East, 482.49 feet;
THENCE North 88° 48' 30" East, 175.07 feet,
THENCE South 01° 08' 16" East, 175.10 feet;
THENCE North 88° 50' 44" East, 502.22 feet;
THENCE North 01° 08' 16" West, 1,327.45 feet,
THENCE North 58° 49' 13" East, 453.08 feet to the beginning of a 603.11-foot radius curve to the left;
THENCE along the arc of said curve, passing through a central angle of 59° 58' 03", an arc distance of 630.88 feet;
THENCE North 01° 06' 42" West, 92.34 feet;
THENCE South 89° 12' 14" East, 57.79 feet;
THENCE South 11° 17' 51" East, 741.68 feet to the West margin of "C" Street Southwest;
THENCE South 01° 10' 16" East, along said margin 3,285.27 feet;
THENCE South 40° 43' 00" West, 52.40 feet to the POINT OF BEGINNING.

Project Name. Boeing Auburn Plant
May 8, 2002

RWG/alh
100041017.wpd

Page 2 of 3

Parcel "E"

All that portion of the Southwest quarter of Section 25, Township 21 North, Range 4 East, Willamette Meridian, in King County, Washington, lying East of the East margin of the Chicago, Milwaukee, St Paul & Pacific Company's right-of-way.

EXCEPT the North 30 feet, the South 30 feet, and the East 20 feet thereof for roads;

EXCEPT that portion thereof conveyed to the City of Algonia by deed recorded under King County Recording No 7106150532,

EXCEPT that portion thereof conveyed to the State of Washington for State Road No 167 by deeds recorded under King County Recording Nos 7203140273 and 7203200301,

AND EXCEPT that portion thereof condemned by the State of Washington for State Road No. 167 in King County Superior Court Cause No 740400.

2002 092 0001614

Project Name: Boeing Auburn Plant
May 8, 2002

RWG/ath
100941 017.wpd

Page 3 of 3

EXHIBIT "B"

SAFEBAY PROPERTY:

PARCEL ONE:

THE WEST HALF OF THE WEST HALF OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 25, TOWNSHIP 21 NORTH, RANGE 4 EAST, W. M., IN KING COUNTY, WASHINGTON;

EXCEPT THE WEST 20 FEET CONVEYED TO KING COUNTY FOR ROAD BY DEED RECORDED UNDER KING COUNTY RECORDING NO. 2133635;

EXCEPT THE EAST 20 FEET OF THE WEST 40 FEET OF THE NORTH 400 FEET CONVEYED TO CITY OF ALGONA BY DEED RECORDED UNDER KING COUNTY RECORDING NO. 7106150533;

EXCEPT THAT PORTION LYING SOUTH OF NORTH LINE OF TRACT CONVEYED TO THE STATE OF WASHINGTON BY DEED RECORDED UNDER KING COUNTY RECORDING NO. 7106250394;

AND EXCEPT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH 1/4 CORNER OF SECTION 25, TOWNSHIP 21 NORTH, RANGE 4 EAST, W. M., IN KING COUNTY, WASHINGTON;

THENCE EASTERLY ALONG THE SOUTH LINE OF SAID SECTION, A DISTANCE OF 328 FEET, MORE OR LESS, TO AN INTERSECTION WITH THE WEST LINE OF THE EAST HALF OF THE WEST HALF OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION;

THENCE NORTHERLY ALONG SAID WEST LINE, A DISTANCE OF 340.38 FEET TO THE TRUE POINT OF BEGINNING;

THENCE WESTERLY PARALLEL TO THE SOUTH LINE OF SAID SECTION 25, A DISTANCE OF 110 FEET;

THENCE NORTHERLY ALONG A LINE PARALLEL TO SAID WEST LINE OF THE EAST HALF OF THE WEST HALF OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 25, A DISTANCE OF 560.00 FEET;

THENCE EASTERLY ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SECTION 25, A DISTANCE OF 110 FEET TO AN INTERSECTION WITH THE SAID WEST LINE OF THE EAST HALF OF THE WEST HALF OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 25;

THENCE SOUTHERLY TO THE TRUE POINT OF BEGINNING.

AND

THE SOUTH 340.38 FEET OF THE EAST HALF OF THE WEST HALF OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 25, TOWNSHIP 21 NORTH, RANGE 4 EAST, W. M., IN KING COUNTY, WASHINGTON,

EXCEPT THE WEST 36 FEET THEREOF;

2002 092 0001614

AND EXCEPT THAT PORTION THEREOF LYING SOUTHERLY OF THE NORTHERLY LINE OF THE ELLINGSON EXTENSION OF STATE HIGHWAY S.R. 167, AS CONVEYED TO THE STATE OF WASHINGTON BY DEED RECORDED UNDER KING COUNTY RECORDING NO. 7111180296;

TOGETHER WITH THE NORTH 45 FEET OF THE SOUTH 385.38 FEET OF THE EAST 161 FEET OF THE EAST HALF OF THE WEST HALF OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 25.

AND

LOT 1 OF CITY OF AUBURN LOT LINE ADJUSTMENT NO. LLA02-0015, RECORDED UNDER RECORDING NO. 20020725001632, BEING A PORTION OF THE SOUTHEAST 1/4 AND THE NORTHEAST 1/4 OF SECTION 25, TOWNSHIP 21 NORTH, RANGE 4 EAST, W.M.;

EXCEPT ANY IMPROVEMENTS LYING UPON SAID PARCEL ONE.

SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON.

PARCEL TWO:

AN EASEMENT FOR AN OUTFALL STORM SEWER LINE TOGETHER WITH THE RIGHT OF ACCESS THERETO FOR THE OPERATION, MAINTENANCE, IMPROVEMENT, REPLACEMENT, REPAIR AND INSPECTION OF THE SAME, AS ESTABLISHED IN INSTRUMENT RECORDED UNDER RECORDING NO. 7412260129, BEING MORE PARTICULARLY DESCRIBED AS:

A PARCEL IN THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 21 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEING A STRIP 60.00 FEET WIDE, 30.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE WHICH BEGINS ON THE WESTERLY BOUNDARY OF PACIFIC AVENUE WHICH IS 406.16 FEET SOUTHERLY OF THE INTERSECTION OF THE WESTERLY BOUNDARY OF PACIFIC AVENUE AND THE NORTHERLY BOUNDARY OF SECTION 36;
THENCE SOUTH 85°25'34" WEST 1,593.79 FEET TO A POINT 80.00 FEET EASTERLY OF THE EASTERLY RIGHT OF WAY OF THE CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILWAY; AND

A PARCEL IN LOTS 35, 36 AND 43 OF C.D. HILLMAN'S PACIFIC CITY ADDITION TO THE CITY OF SEATTLE, WASHINGTON, DIVISION NO. 2 AS PER PLAT RECORDED IN VOLUME 13, ON PAGE 49, RECORDS OF KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEING A STRIP 50.00 FEET WIDE, 25.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE WHICH BEGINS AT A POINT ON THE NORTHERLY BOUNDARY OF SAID LOT 35, SAID POINT BEING 139.50 FEET EAST OF THE NORTHWEST CORNER OF SAID LOT 35,
THENCE SOUTH 2°57' EAST 336.03 FEET TO A MANHOLE;
THENCE SOUTH 85°24' WEST 800.15 FEET TO THE WESTERLY BOUNDARY OF LOT 43;
SAID WESTERLY BOUNDARY BEING THE EASTERLY EDGE OF PACIFIC AVENUE AND BEING 404.82 FEET SOUTH OF THE NORTH LINE OF SAID SECTION 36;

SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON

2002 092 0001614

THE BOEING CO

PACIFIC AVENUE SO.

1"=400FT

THE BOEING CO.

REFRIGERATED WAREHOUSE

GROCERY WAREHOUSE

FUTURE GM/HBC

4.48 ACRE DETENTION POND

NOT A PART

TRUCK SHOP

RECYCLE CENTER

PUMP HOUSE

SUB-STATION

EXISTING UTILITY EASEMENT

PROPOSED UTILITY EASEMENT

PROPOSED RAIL EASEMENT

PROPOSED MONITOR WELL EASEMENT

PROPOSED LANDSCAPE EASEMENT

C STREET SW

ELLINGSON ROAD

EXISTING WETLANDS ON PARCELS B & C ARE SUBJECT TO TERMS AND CONDITIONS OF PROPOSED SEPARATE DRAINAGE AGREEMENT

7/31/02 1"=400'

EXHIBIT C
SAFeway SITE PLAN

File P:\000002\100944\220422\10094527M3.SX11.dwg Date/Time 07/31/2002 16:54 Scale 1=400 cmas Kyr6 10094510) set-onmod

EXHIBIT C
SAFEWAY SITE PLAN

EXHIBIT "D"

LEGAL DESCRIPTION

GOVERNMENT CANAL

An assignable, permanent, and perpetual easement for the existing outfall storm sewer line or any replacement thereof, together with a right of access thereto for the operation, maintenance, improvement, replacement, repair, or inspection of such line, over a strip of land described as follows

A parcel in the Southwest quarter of Section 25, and in the West half of Section 36, Township 21 North, Range 4 East, Willamette Meridian, King County, Washington, and the Northwest quarter of Section 1, Township 20 North, Range 4 East, Willamette Meridian, Pierce County, Washington, described as a strip 80.00 feet wide, 40.00 feet on each side of the following described line:

BEGINNING at a point on the South right-of-way line of Algona Road, 40.00 feet East of the East right-of-way line of Chicago, Milwaukee, St. Paul, and Pacific Railroad;

THENCE South 7,358 feet more or less parallel to said Railroad to a point 133.62 feet South of the North line of Lot 3, of C.D. Hillman's Pacific City Addition to the City of Seattle, No. 3;

THENCE along a 150-foot-radius curve to the left having a central angle of 89° 28' for a distance of 234.22 feet;

THENCE North 88° 49' East, 132.24 feet,

THENCE along a 150-foot-radius curve to the right having a central angle of 60° 20' for a distance of 167.95 feet;

THENCE South 30° 51' East, 1,110.00 feet to the right-of-way of White River.

Project Name: Boeing Auburn Plant
August 1, 2002

RWG/jss
10084L.029.dwg

2002 092 0001614

EXHIBIT "E"

LEGAL DESCRIPTION

RAIL EASEMENT AREA

All those portions of Lots 1 of City of Auburn Lot Line Adjustment No. LLA02-0015, as recorded under Recording No. 20020725001632, Records of King County, Washington, more particularly described as follows,

A strip of land, 25 feet in width, lying 12.5 feet on each side of the following described easement centerline:

COMMENCING at the Southeast corner of Section 25, Township 21 North, Range 4 East, Willamette Meridian, King County, Washington;

THENCE North 89° 33' 10" West, along the South line of the Southeast quarter of said Section, a distance of 519.40 feet;

THENCE North 00° 26' 50" East, 20.00 feet,

THENCE North 40° 42' 59" East, 52.40 feet to the West margin of "C" Street S.W.;

THENCE North 01° 10' 16" West, along said margin 3285.27 feet,

THENCE North 11° 17' 51" West, 563.75 feet to the POINT OF BEGINNING and the beginning of a non-tangent curve to the right, from which point the radius point bears North 68° 45' 18" West, 720.00 feet distant,

THENCE Southwesterly along the arc of said curve, passing through a central angle of 16° 20' 44", an arc distance of 192.84 feet,

THENCE South 36° 35' 25" West, 159.79 feet to the beginning of a 720.00-foot-radius curve to the right;

THENCE along the arc of said curve, passing through a central angle of 07° 45' 02", an arc distance of 97.40 feet;

THENCE South 44° 20' 28" West, 351.22 feet to the beginning of 730.00-foot-radius curve to the right;

THENCE along the arc of said curve, passing through a central angle of 25° 27' 26", an arc distance of 324.35 feet to the West line of said Lot 1 and the terminus of the herein described easement centerline.

Project Name: Boeing Auburn Plant
August 1, 2002

RWG/jss
100941034.doc

2002 092 0001614

EXHIBIT "F"

LEGAL DESCRIPTION

PROPOSED 20-FOOT-WIDE UTILITY EASEMENT

The West 20 feet, the South 20 feet, the Southeasterly 20 feet, and the East 20 feet of Lot 1, City of Auburn Lot Line Adjustment No. LLA02-0015, as recorded under Recording No. 20020725001632, Records of King County, Washington;

TOGETHER WITH a strip of land, 20 feet in width, lying 10 feet on each side of the following described easement centerline:

COMMENCING at the Southeast corner of Section 25, Township 21 North, Range 4 East, Willamette Meridian, King County, Washington;

THENCE North 89° 33' 10" West, along the South line of the Southeast quarter of said Section, a distance of 519.40 feet;

THENCE North 00° 26' 50" East, 20.00 feet;

THENCE North 89° 33' 10" West, 1453.04 feet;

THENCE North 01° 12' 18" East, 1299.17 feet;

THENCE North 89° 22' 50" West, 3.00 feet to the POINT OF BEGINNING;

THENCE North 01° 09' 20" West, 724.39 feet to the North line of said Lot 1 and the terminus of the herein described easement centerline.

TOGETHER WITH a strip of land, 20 feet in width, lying 10 feet on each side of the following described easement centerline:

COMMENCING at the Southeast corner of said Section 25;

THENCE North 89° 33' 10" West, along the South line of said Southeast quarter of said Section, a distance of 519.40 feet;

THENCE North 00° 26' 50" East, 20.00 feet;

THENCE North 40° 42' 58" East, 52.40 feet;

THENCE North 01° 10' 16" West, along the West margin of "C" Street S.W., a distance of 3275.27 feet to the POINT OF BEGINNING;

THENCE South 89° 21' 15" West, 524.20 feet;

THENCE South 44° 20' 28" West, 96.21 feet to the beginning of a 762.50-foot-radius curve to the right;

THENCE along the arc of said curve, passing through a central angle of 26° 02' 52", an arc distance of 342.10 feet to the West line of said Lot 1 and the terminus of the herein described easement centerline.

The intent of this easement is to remain 20 feet in width and remain the East 20 feet of the Grantor's property along "C" Street S.W. and remain adjacent to "C" Street S.W. When and if additional right-of-way is taken or dedicated, the easement will move accordingly and remain in force.

Project Name, Boeing Auburn Plant
August 1, 2002

RWG/js
100841.002.doc

2002 092 0001614

EXHIBIT "G"

LEGAL DESCRIPTION

PROPOSED EASTERLY MONUMENT SIGN AND LANDSCAPE EASEMENT

All those portions of the Southeast quarter of Section 25, Township 21 North, Range 4 East, Willamette Meridian, King County, Washington, more particularly described as follows:

COMMENCING at the Southeast corner of said Section 25;

THENCE North 89° 33' 10" West, along the South line of said Southeast quarter, a distance of 519.40 feet,

THENCE North 00° 26' 50" East, 20.00 feet to the POINT OF BEGINNING;

THENCE North 89° 33' 10" West, 15.00 feet;

THENCE North 00° 26' 54" East, 19.96 feet;

THENCE North 44° 38' 19" East, 41.02 feet;

THENCE North 88° 49' 44" East, 20.00 feet to the Westerly margin of "C" Street S.W.;

THENCE South 01° 10' 16" East, along said margin 9.98 feet;

THENCE South 40° 42' 59" West, 52.40 feet to the POINT OF BEGINNING.

2002 092 0001814

Project Name: Boeing Auburn Plant
August 1, 2002

RWG/jss
100941 030 doc

EXHIBIT "G"

LEGAL DESCRIPTION

PROPOSED WESTERLY MONUMENT SIGN AND LANDSCAPE EASEMENT

All that portion of the Southeast quarter of Section 25, Township 21 North, Range 4 East, Willamette Meridian, King County, Washington, more particularly described as follows

COMMENCING at the South quarter corner of said Section 25,
THENCE South 89° 33' 10" East, along the South line of said Southeast quarter, a distance of 328.78 feet;
THENCE North 01° 11' 33" East, 30.00 feet to the POINT OF BEGINNING;
THENCE CONTINUING North 01° 11' 33" East, 20.00 feet;
THENCE North 89° 33' 10" West, 259.14 feet;
THENCE North 43° 35' 07" West, 42.11 feet;
THENCE North 88° 49' 14" West, 20.00 feet;
THENCE South 01° 10' 46" West, 25.79 feet;
THENCE South 44° 46' 05" East, 35.12 feet;
THENCE South 89° 33' 10" East, 283.55 feet to the POINT OF BEGINNING.

Project Name: Boeing Auburn Plant
August 1, 2002

RWG/jss
100941.031.doc

2002 092 0001614

EXHIBIT "H"

LEGAL DESCRIPTION

PROPOSED 20-FOOT STORM DRAINAGE EASEMENT

All those portions of Lot 1 of City of Auburn Lot Line Adjustment No. LLA02-0015, as recorded under Recording No. 20020725001632, Records of King County, Washington, more particularly described as follows.

A strip of land, 20 feet in width, lying 10 feet on each side of the following described easement centerline.

COMMENCING at the Southeast corner of Section 25, Township 21 North, Range 4 East, Willamette Meridian, King County, Washington;
THENCE North 88° 33' 10" West, along the South line of the Southeast quarter of said Section, a distance of 519.40 feet;
THENCE North 00° 28' 50" East, 20.00 feet;
THENCE North 88° 33' 10" West, 1311.29 feet to the POINT OF BEGINNING;
THENCE North 01° 10' 48" West, 1851.45 feet to the North line of said Lot 1 and the terminus of the herein described easement centerline

2002 092 0001614

Project Name Boeing Auburn Plant
August 1, 2002

RWG/jss
100941.033 doc

EXHIBIT C

AGREEMENT REGARDING DRAINAGE AGREEMENT

This AGREEMENT ("Agreement") is entered into as of the ____ day of _____, 2010, by and between the CITY OF AUBURN, a Washington Municipal Corporation ("City") and SAFEWAY INC., a Delaware Corporation ("Safeway").

RECITALS

A. Safeway is the owner of certain real property and all improvements thereon (the "Safeway Property") located in the City of Auburn, County of King, Washington, which is legally described on Exhibit A attached hereto.

B. Simultaneously with the execution hereof, City is acquiring from Safeway a certain portion of the Safeway Property (the "Acquired Property"). The Acquired Property is legally described on Exhibit B attached hereto. City intends to develop and use the Acquired Property in conjunction with its use and development of one or more properties adjacent thereto, which adjacent properties are more particularly described in Exhibits C and D attached hereto. All properties at any time used or developed in connection with the Acquired Property are herein referred to as the "City Properties."

C. The Safeway Property, including the Acquired Property, is subject to a Drainage Agreement (the "Drainage Agreement") entered into between Safeway and the Boeing Company ("Boeing") dated September 18, 2002, which was recorded in the real property records of King County, Washington as Instrument No. 20020920001615.

D. As contemplated in Section 1.4 of the Drainage Agreement, successors in interest to the properties governed thereby shall be subject to its terms, but may allocate or delegate between themselves the obligations that run with their respective properties. The parties wish hereby to establish their respective obligations under the Drainage Agreement.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Safeway and the City agree as follows:

1. Defined Terms Capitalized terms used herein without definition shall have the meanings given them in the Drainage Agreement.

2. Cost Allocation.

(a) Except for the obligations expressly assumed by Safeway herein, the parties agree that the City's share of any costs or expenses owed by the Owner of the Safeway Property pursuant to the Drainage Agreement shall be one percent (1%) of the costs

EXHIBIT C

associated with the Safeway property as a whole; provided, that for purposes of Section 4.5 (Indemnification) of the Drainage Agreement, each party's responsibility shall be to pay such costs as are associated with the Property that it owns.

(b) Safeway agrees to pay, without contribution from the City, all costs incurred by Safeway in connection with (i) regular maintenance of the East Ditch, of the nature and cost historically performed and paid for by Safeway to date under the Drainage Agreement, and (ii) regular maintenance of the Government Canal performed by the Owner of the Boeing Property and billed to the Owner of the Safeway Property, of the nature and cost historically billed to Safeway by Boeing to date under the Drainage Agreement.

3. Drainage of the City Properties.

As recited in the Drainage Agreement, the Safeway Property includes certain appurtenant drainage easement rights, which rights were created pursuant to an instrument recorded under Recording No. 7412260129, as described in Exhibit E to the Drainage Agreement (the "Drainage Easement"). The conveyance of the Acquired Property to the City does not include the Drainage Easement or any part thereof, all of which are hereby disclaimed by the City. The City shall design and construct all improvements on the Acquired Property and City Properties in such a manner as to not allow storm or surface waters from the Acquired Property or City Properties to enter the drainage systems described in the Drainage Agreement, absent an agreement from the owner(s) or beneficiaries of the affected system (Safeway and Boeing as to the East Ditch, Boeing as to the balance). Without limiting the foregoing, the City Properties shall not divert or otherwise allow storm or surface waters to drain into any wetlands areas, into any Boeing Canals, into the East Ditch or the Government Canal. Without limiting the foregoing, the City shall observe the requirements of Sections 3.1 and 3.2 of the Drainage Agreement. Notwithstanding the foregoing, nothing herein shall prohibit the City from continuing its existing use of storm drainage facilities serving the City Property and unrelated to the Drainage Agreement, and/or making an agreement with Boeing for the additional use of Boeing's Government Canal for the City's drainage purposes.

4. Assumption and Acknowledgement by the City.

The City acknowledges and agrees to be bound by all the terms and conditions of the Drainage Agreement, including without limitation those matters set forth in Section 4, Environmental Matters.

5. Dispute Resolution and Remedies

The dispute resolution and remedies provisions of the Drainage Agreement, set forth in Sections 6 (Default Resolution Procedure) and 7.16 (Waiver of Jury Trial) shall apply to this Agreement and are incorporated herein by reference.

EXHIBIT C

6. Agreement to Run with the Land

The obligations of Safeway and the City under this Agreement shall be binding upon, and the rights of Safeway and the City under this Agreement shall inure to the benefit of, the successors in title to and the lessees and occupants of the Safeway Property and the City Properties, respectively.

7. Notice

All notifications under this Agreement shall be sent to the parties by an established delivery service that maintains records of delivery, or shall be delivered by hand to the following addresses, or to any address a party may designate:

To Safeway:	Safeway Inc. 1121 124th Ave NE Bellevue, WA 98005 Attn: Real Estate Director
With Copies to:	Safeway Inc. Real Estate Law 5918 Stoneridge Mall Rd. Pleasanton CA 94588-3229 Re: Auburn Distribution Center
To City of Auburn:	City of Auburn 25 W. Main St. ATTN: Facilities Management Auburn, WA 98001
With Copies to:	City of Auburn 25 W. Main St. ATTN: City Attorney Auburn, WA 98001

8. Construction

The parties agree that they have each been represented by counsel of their choosing and that they have had equal say in drafting this Agreement. Therefore, this Agreement shall be interpreted in accordance with general rules of construction and not against either party as the drafter.

9. Venue

Venue for the resolution of any disputes under this Agreement shall be in the Superior Court for King County, Washington. All other dispute resolution provisions of the Drainage Easement remain in full force and effect.

EXHIBIT C

10. Severability

In the event that any provision of this Agreement is found to be unenforceable, the remainder of the Agreement shall remain valid and enforceable.

11. Entire Agreement

This Agreement, including all exhibits hereto, supersedes any prior agreements, negotiations, and communications, oral or written, related to this subject matter and contains the entire agreement between the parties with respect to this subject matter.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date noted above.


CITY OF AUBURN	SAFEWAY INC.
By: _____ Peter B. Lewis, Mayor	By: _____ Its Assistant Vice-President
Attest: _____ Dani Daskam, City Clerk	By: _____ Its Assistant Secretary
Approved as to Form:  _____ Daniel B. Heid, City Attorney	

EXHIBIT C

EXHIBIT "A"

THAT PORTION OF THE EAST HALF OF SECTION 25, TOWNSHIP 21 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, KING COUNTY, WASHINGTON, MORE PARTICULARLY DESCRIBED AS FOLLOWS;

LOT 1 OF THE CITY OF AUBURN LOT LINE ADJUSTMENT NO. LLA02-0015, AS RECORDED UNDER KING COUNTY RECORDING NO. 20020725001632.

EXHIBIT C

EXHIBIT "B"

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 21 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, KING COUNTY, WASHINGTON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE NORTH 430 FEET OF LOT 1 OF THE CITY OF AUBURN LOT LINE ADJUSTMENT NO. LLA02-0015, AS RECORDED UNDER RECORDING NO. 20020725001632, RECORDS OF SAID COUNTY, AS MEASURED PERPENDICULAR TO THE MOST NORTHERLY LINE OF SAID LOT 1, SAID MOST NORTHERLY LINE BEARING SOUTH 89° 12' 14" EAST, A DISTANCE OF 57.79 FEET.

SAID PROPERTY BEING A PORTION OF KING COUNTY ASSESSOR'S TAX PARCEL NO. 2521049096.

EXHIBIT C

EXHIBIT "C"

LEGAL DESCRIPTION U S GOVERNMENT SEVERANCE PARCEL A

A PARCEL OF U.S. GOVERNMENT LAND WITHIN THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 21 NORTH, RANGE 4 EAST W.M., SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER OF SAID SECTION 25 AS MONUMENTED BY AN EXISTING BRASS DISC, FROM WHICH POINT THE WEST QUARTER CORNER OF SAID SECTION BEARS NORTH 89°11'20" WEST 2599.20 FEET DISTANT AND FROM WHICH POINT THE SOUTH QUARTER CORNER OF SAID SECTION BEARS SOUTH 01°10'46" WEST 2642.32 FEET DISTANT;

THENCE NORTH 01°10'46" EAST A DISTANCE OF 50.01 FEET;
THENCE SOUTH 89°11'20" EAST, A DISTANCE OF 121.20 FEET TO THE BEGINNING OF A 603.11 FOOT RADIUS CURVE TO THE LEFT;
THENCE EASTERLY ALONG SAID CURVE, AN ARC DISTANCE OF 336.65 FEET, THROUGH A CENTRAL ANGLE OF 31°58'55";
THENCE NORTH 58°49'45" EAST A DISTANCE OF 547.73 FEET TO THE TRUE POINT OF BEGINNING, SAID POINT LIES SOUTH 01°10'37" EAST 5634.74 FEET DISTANT FROM A 6" X 6" CONCRETE MONUMENT ON THE SOUTH MARGIN OF AN EASEMENT FOR 15TH STREET SOUTHWEST RIGHT-OF-WAY CONVEYED TO THE CITY OF AUBURN BY INSTRUMENT RECORDED UNDER RECORDING NUMBER 6160979;
THENCE NORTH 01°10'37" WEST A DISTANCE OF 671.78 FEET;
THENCE NORTH 88°51'31" EAST A DISTANCE OF 333.47 FEET;
THENCE SOUTH 01°08'29" EAST A DISTANCE OF 14.47 FEET;
THENCE NORTH 88°42'23" EAST A DISTANCE OF 527.94 FEET;
THENCE SOUTH 01°17'37" EAST A DISTANCE OF 2.58 FEET;
THENCE SOUTH 89°06'10" EAST A DISTANCE OF 22.29 FEET TO THE SOUTH LINE OF SAID U.S. GOVERNMENT LAND AND A NON-TANGENT CURVE, THE CENTER OF WHICH BEARS NORTH 68°46'51" WEST 603.11 FEET DISTANT;
THENCE SOUTHWESTERLY ALONG SAID CURVE 395.89 FEET THROUGH A CENTRAL ANGLE OF 37°36'36";
THENCE SOUTH 58°49'45" WEST A DISTANCE OF 724.60 FEET TO THE TRUE POINT OF BEGINNING.

SITUATE IN KING COUNTY, WASHINGTON
CONTAINING 350,257 SQ. FT./ 8.04 ACRES.

EXHIBIT C

EXHIBIT "D"

LEGAL DESCRIPTION U S GOVERNMENT SEVERANCE PARCEL B

A PARCEL OF U.S. GOVERNMENT LAND WITHIN THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 21 NORTH, RANGE 4 EAST W.M., SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER OF SAID SECTION 25 AS MONUMENTED BY AN EXISTING BRASS DISC, FROM WHICH POINT THE WEST QUARTER CORNER OF SAID SECTION BEARS NORTH 89°11'20" WEST 2599.20 FEET DISTANT AND FROM WHICH POINT THE SOUTH QUARTER CORNER OF SAID SECTION BEARS SOUTH 01°10'46" WEST 2642.32 FEET DISTANT;

THENCE NORTH 01°10'46" EAST A DISTANCE OF 50.01 FEET;
THENCE SOUTH 89°11'20" EAST, A DISTANCE OF 121.20 FEET TO THE BEGINNING OF A 603.11 FOOT RADIUS CURVE TO THE LEFT;
THENCE EASTERLY ALONG SAID CURVE, AN ARC DISTANCE OF 336.65 FEET, THROUGH A CENTRAL ANGLE OF 31°58'55";
THENCE NORTH 58°49'45" EAST A DISTANCE OF 547.73 FEET TO A POINT WHICH LIES SOUTH 01°10'37" EAST 5634.74 FEET DISTANT FROM A 6" X 6" CONCRETE MONUMENT ON THE SOUTH MARGIN OF AN EASEMENT FOR 15TH STREET SOUTHWEST RIGHT-OF-WAY CONVEYED TO THE CITY OF AUBURN BY INSTRUMENT RECORDED UNDER RECORDING NUMBER 6160979;
THENCE NORTH 01°10'37" WEST A DISTANCE OF 671.78 FEET;
THENCE NORTH 88°51'31" EAST A DISTANCE OF 333.47 FEET;
THENCE SOUTH 01°08'29" EAST A DISTANCE OF 14.47 FEET;
THENCE NORTH 88°42'23" EAST A DISTANCE OF 527.94 FEET;
THENCE SOUTH 01°17'37" EAST A DISTANCE OF 2.58 FEET;
THENCE SOUTH 89°06'10" EAST A DISTANCE OF 22.29 FEET TO THE SOUTH LINE OF SAID U.S. GOVERNMENT LAND AND A NON-TANGENT CURVE, THE CENTER OF WHICH BEARS NORTH 68°46'51" WEST 603.11 FEET DISTANT;
THENCE NORTHEASTERLY ALONG SAID CURVE 3.71 FEET THROUGH A CENTRAL ANGLE OF 0°21'10";
THENCE NORTH 88°42'23" EAST A DISTANCE OF 158.07 FEET TO THE TRUE POINT OF BEGINNING;
THENCE NORTH 88°42'23" EAST A DISTANCE OF 73.72 FEET TO THE WEST RIGHT-OF-WAY OF "C" STREET SOUTHWEST;
THENCE SOUTH 01°10'47" EAST, ALONG SAID RIGHT-OF-WAY A DISTANCE OF 414.25 FEET;
THENCE NORTH 11°16'27" WEST A DISTANCE OF 420.61 FEET TO THE TRUE POINT OF BEGINNING.

SITUATE IN KING COUNTY WASHINGTON
CONTAINING 15269 SQ. FT./ 0.35 ACRES.